( )

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1926

No.

ÆTNA INSURANCE COMPANY, AGRICULTURAL INSURANCE COMPANY, ALLIANCE INSURANCE COMPANY OF PHILADELPHIA, ET AL., PETITIONERS,

vs.

BEN C. HYDE, SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF MISSOURI

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[fol. 1]

IN THE SUPREME COURT OF MISSOURI

No. 26187

Aetna Insurance Company et al., Respondents,

vs.

Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, Appellant

Transcript of the Record

[fol. 2] United States of America,
State of Missouri, ss:

In Circuit Court of Cole County

Judgment and Order Granting Appeal—Filed in Missouri Supreme Court, January 14, 1925

Be It Remembered, That heretofore, to wit, on the 14th day of January, 1925, there was filed in the office of the clerk of the Supreme Court of the state of Missouri, in a cause between Aetna Insurance Company et al., respondents, and Ben C. Hyde, superintendent of insurance department of the state of Missouri, appellant, No. 26,187, a certified transcript of the judgment of the Circuit Court of Cole county, Missouri, and of the order of said Circuit Court allowing an appeal from said judgment to the Supreme Court of Missouri, which said transcript of said judgment and of said order allowing an appeal is in the words and figures following, to wit:

"Certified copy of judgment and order granting appeal in case of Aetna Insurance Company et al., respondents, v. Ben C. Hyde, superintendent of the Insurance Department of the State of Missouri, appellant.

"On Appeal to the Supreme Court of Missouri from the Circuit Court of Cole County, Missouri

"Honorable H. J. Westhues, Judge

"Hogsett & Boyle, Kansas City, Mo., Leahy, Saunders & Walther, St. Louis, Mo., Bates, Hicks & Folonie, Chicago, Ill., attorneys for the respondents.

"Hon. John T. Barker, Kansas City, Mo., Hon. Floyd E. Jacobs, Kansas City, Mo., attorneys for the appellant.

[fol. 3] STATE OF MISSOURI,
County of Cole, ss:

Be It Remembered, That heretofore, to wit, at the November Term 1924 of the Circuit Court of Cole County, Missouri, and on the 22nd day of December, A. D. 1924, it being the Twelfth Day of the said November Term 1924 of said Court, the following proceedings were had in Cause No. 4566 of the causes in said Court, styled, Aetna Insurance Company et al., plaintiffs, v. Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, defendant:

IN THE CIRCUIT COURT OF COLE COUNTY, MISSOURI, NOVEMBER TERM, 1924, MONDAY, DECEMBER 22, 1924, 12TH DAY

AETNA INSURANCE COMPANY, AGRICULTURAL INSURANCE Company, Alliance Insurance Company of Philadelphia, American Alliance Insurance Company, American Central Insurance Company, American Eagle Fire Insurance Company, American Insurance Company of Newark, Assurance Company of America, Atlas Assurance Company, Automobile Insurance Company, Abeille Fire Insurance Company of Paris, Boston Insurance Company, British America Assurance Company, British General Insurance Co. of London, Eng., Buffalo Insurance Company, Bankers & Shippers Fire Insurance Company, California Insurance Company, Caledonian Insurance Company, Cam-

den Fire Insurance Association, Century Insurance Company, Ltd., Citizens Insurance Company, City of New York Insurance Company, Central States Fire Insurance Company, Cleveland National Fire Insurance Company, Colonial Assurance Company, Columbia Insurance Company, Commercial Union Assurance Company, Ltd., Commercial Union Fire Insurance Company, Commonwealth Insurance Company of New York, Concordia Fire Insurance Company, Connecticut Fire Insurance Company, Continental Insurance Company, County Fire Insurance Company, Detroit Fire & Marine Insurance Company, Dubuque Fire & Marine Insurance Company, Eagle Star & British Dominion's Insurance Company, Ltd., Employers Fire Insurance Company, Equitable Fire & Marine Insurance Company, Federal Insurance Company, Fidelity-Phenix Fire Insurance Company, Fire Association of Philadelphia, Firemen's Fund Insurance Company, Firemen's Insurance Company of Newark, N. J., Franklin Fire Insurance Com-
[fol. 4] pany, General Fire Assurance Company, Girard Fire & Marine Insurance Company, Glens Falls Insurance Company, Globe & Rutgers Fire Insurance Company, Granite State Fire Insurance Company, Great American Insurance Company, Great Lakes Insurance Company, Hanover Fire Insurance Company, Hartford Fire Insurance Company, Home Insurance Company, Home Fire & Marine Insurance Company, Guaranty Fire Assurance Corporation, Imperial Assurance Company, Insurance Company of North America, Insurance Company State of Pennsylvania, Importers & Exporters Insurance Company, Liverpool & London & Globe Insurance Company, London Assurance Corporation, Chicago Fire and Marine Insurance Company, Excelsior Insurance Company, Union Marine Insurance Company, Limited, Equity Fire Insurance Company, Liberty Fire Insurance Company, American Union Insurance Company, East & West Insurance Company, The Eagle Fire Company, London & Lancashire Fire Insurance Company, Ltd., London & Scottish Assurance Corporation, Ltd., Law Union & Rock Insurance Co., Ltd., Maryland Motor Car Insurance Company, Marine Insurance Company, Ltd., Marquette National Fire Insurance Company, Mas-

sachusetts Fire & Marine Insurance Company, Mechanics Insurance Company of Philadelphia, Mechanics & Traders Insurance Company, Mercantile Insurance Company of America, Merchants Fire Assurance Corporation, Michigan Fire & Marine Insurance Company, Milwaukee Mechanics Insurance Company, Minneapolis Fire & Marine Insurance Company, National Ben Franklin Fire Insurance Company, National Fire Insurance Company of Hartford, National Liberty Insurance Company of America, National Union Fire Insurance Company, Nationale Insurance Company of Paris, Netherlands Fire & Life Insurance Co. of the Hague, Newark Fire Insurance Company, New Brunswick Fire Insurance Company, New Hampshire Fire Insurance Company, New Jersey Insurance Company of New Jersey, Niagara Fire Insurance Company, North British & Mercantile Insurance Company, North River Insurance Company, Northern Assurance Company, Ltd., Northern Insurance Company, Northwestern National Insurance Co., Norwich Union Fire Insurance Society, Ltd., Old Colony Insurance Company, Orient Insurance Company, Pacific Fire Insurance Company, Palatine Insurance Company, Ltd., Patriotic Assurance Company, Ltd., Pennsylvania Fire Insurance Company, Phenix Fire Insurance Company of Paris, Phoenix Assurance Company, Ltd., Phoenix Insurance Company of Hartford, Providence-Washington Insurance Company, Queen Insurance Company, Reliance Insurance Company of Philadelphia, Rhode Island Insur-

[fol. 5] ance Company, Royal Exchange Assurance Company, Ltd., Royal Insurance Company, Ltd., Safeguard Insurance Company, Scottish Union & National Insurance Company, Security Insurance Company of New Haven, Springfield Fire & Marine Insurance Company, St. Paul Fire & Marine Insurance Company, Standard Fire Insurance Company, Standard Fire Insurance Company of New Jersey, State Assurance Company, Sterling Fire Insurance Company, Stuyvesant Fire Insurance Company, Sun Insurance Office of London, Svea Fire & Life Insurance Company, Star Insurance Company of America, Tokio Fire & Marine Insurance Company, Union Assurance Society, Ltd., Union Fire Insurance Company of Paris, United States Fire Insurance Com-

pany, United States Merchants & Shippers Insurance Company, Urbaine Fire Insurance Company, Union Insurance Society of Canton, Ltd., Western Assurance Company, United Firemen's Insurance Company, Victory Insurance Company of Philadelphia, Fidelity Union Fire Insurance Company, Great Western Fire Insurance Company, Indemnity Mutual Marine Assurance Company, London & Provincial Marine & General Insurance Company, National Security Fire Insurance Company, Omaha Liberty Fire Insurance Company, Potomac Insurance Company of the District of Columbia, Superior Fire Insurance Company, Independence Insurance Company, Henry Clay Fire Insurance Company, Philadelphia Fire and Marine Insurance Company, Merchants Insurance Company, Carolina Insurance Company, Twin City Fire Insurance Company, Westchester Fire Insurance Company, Yorkshire Insurance Company, Hudson Insurance Company, Plaintiffs,

v.

Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, Defendant.

"Now on this 22nd day of December, 1924, being one of the days of the November Term 1924 of this Court, come the parties plaintiffs and defendant by their attorneys of record, and the defendant in person. And now comes the Honorable John I. Williamson, Referee in this cause, and now files his report herein, together with a transcript of all proceedings had and evidence offered before him, and all exhibits and briefs of counsel filed before him in this cause. And now said Referee files herein his supplemental report showing the time spent, services rendered and expenses incurred by him as Referee herein; and files also his motion asking for an order of this court making an allowance to the Referee for his said services and expenses.

[fol. 6] "And now the Court, having heard the evidence offered upon said motion, and the arguments of counsel for both parties thereon, doth now sustain said motion and doth now order that said John I. Williamson, Referee herein, be and he is now allowed the sum of twenty thousand dollars ($20,000.00) as his fee and as compensation to him in full for all services rendered by him in this cause (this

amount being inclusive of all sums heretofore allowed or advanced to the Referee, as hereinafter mentioned), and that he be allowed the further sum of six hundred twenty-seven and 24 100 dollars ($627.24) dollars as expenses, which the court finds said Referee has reasonably and necessarily incurred herein; and that both of said amounts be taxed as costs herein, to which order the defendant excepts. And the Court finds that the parties have heretofore voluntarily paid to the Referee the sum of two thousand ($2,000.00) dollars (of which one thousand ($1,000.00) dollars was paid by plaintiffs and a like amount by defendant), and that the parties have heretofore under order of court paid to the Referee the further sum of three thousand ($3,000.00) dollars (of which fifteen hundred ($1,500.00) dollars was paid by plaintiffs and a like amount by defendant), making an aggregate of five thousand ($5,000.00) dollars advanced and paid by the parties to the Referee on account of his services and expenses, and leaving a balance of fifteen thousand, six hundred twenty-seven and 24 100 ($15,627.24) dollars now due the Referee for services and expenses herein. And the Court doth further order and adjudge that one-half of said balance of fifteen thousand, six hundred twenty-seven and 24 100 ($15,627.24) dollars shall be forthwith advanced and paid to said Referee by the plaintiffs, and that one-half thereof shall be forthwith advanced and paid to said Referee by the defendant, and that the parties or party ultimately prevailing herein shall recover the amount so paid from the party or parties ultimately losing herein, to which order defendant excepts.

"And now comes defendant and files herein his motion to quash the foregoing order fixing the amount of the Referee's fee and ordering it paid as aforesaid, which motion is now by the Court overruled, to which ruling defendant excepts.

"And now the Court doth order that the fees and expenses of R. L. Blume, stenographer, for reporting and [fol. 7] transcribing the testimony and proceedings before the Referee, in the sum of three thousand, seven hundred twenty-five and 96 100 ($3,725.96) dollars be allowed to said R. L. Blume, and that the same be taxed as costs herein; and the Court finds that of this sum the plaintiffs have ad-

vanced and paid to said Blume one half, or one thousand, eight hundred sixty two and 98 100 ($1,862.98) dollars, and the defendant has advanced and paid to said Blume three hundred ninety-one and 28 100 ($391.28) dollars on account, leaving balance due said Blume from defendant of one thousand four hundred seventy-one and 70 100 $1,471.70) dollars. And the Court doth order and adjudge that the parties or party ultimately prevailing herein shall recover the amounts so paid from the party or parties ultimately losing herein.

"And now the defendant is by the court given leave to file his term bill of exceptions herein at any time during this November Term 1924.

"And now plaintiffs ask leave of court to amend their petition by interlineation, to which defendant objects; and said objection is by the Court overruled and leave is granted as asked, to which order defendant excepts; and plaintiffs amend their petition accordingly.

"And now plaintiffs file exceptions to portions of Section XI of the Referee's report, and defendant files exceptions to the Referee's report herein. And the Court being fully advised in the premises doth overrule plaintiffs' said exceptions, to which ruling plaintiffs except; and the Court being fully advised doth overrule defendant's said exceptions, to which ruling defendant excepts.

"And now this cause comes on for final hearing before the Court upon the pleadings, the evidence and the Referee's report herein; and the court having fully considered the same and having heard the arguments of counsel, and being fully advised in the premises, doth order and adjudge that the Referee's report herein be, and the same is now, in all things, sustained and confirmed; and the court now finds the issues herein in favor of the plaintiffs and against the defendant, and the Court finds that plaintiffs are entitled to the relief prayed for in their petition and recommended by the Referee in his said report; and the Court finds that the Rate Reduction Order, in issue herein, made [fol. 8] and promulgated by the defendant Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, on October 9, 1922, is unreasonable, unjust, confiscatory and void, and should be cancelled, set aside and for naught held.

"Wherefore, it is by the court considered, ordered, adjudged and decreed that the aforesaid rate reduction order, and each and every finding, order and direction therein, made and promulgated by the defendant Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, under date of October 9, 1922 (wherein said defendant ordered a reduction of ten (10%) per cent in the rates charged by the stock fire, lightning, hail and windstorm insurance companies doing business in Missouri on fire, lightning, hail and windstorm insurance business written in the State of Missouri) be and the same is now cancelled, set aside and for naught held; and that all of the costs of this cause be and the same are now taxed against the defendant; and that the plaintiffs have and recover of and from the defendant their costs herein laid out and expended, for all of which let execution issue.

"And now defendant files his motion for a new trial herein, which motion the court being fully advised doth now overrule, to which ruling defendant excepts.

"And now defendant files his motion in arrest of judgment herein, which motion the court being fully advised doth now overrule, to which ruling defendant excepts.

"And now defendant files his application and affidavit for an appeal, which application is by the court granted and the defendant is by the court allowed an appeal herein to the Supreme Court of Missouri as prayed. And the defendant is by the court given leave to file bill of exceptions herein at any time until on or before February 28, 1925.

"H. J. Westhues, Judge.

"State of Missouri,
County of Cole, ss:

"I, Richard R. Nacy, Clerk of the Circuit Court of Cole [fol. 9] County, Missouri, do hereby certify that the above and foregoing is a full, true and complete transcript of the judgment in the above entitled cause, showing the term, day of term, month and year in which the same was rendered, and also the order granting an appeal in said cause, as fully as the same appears of record in my office.

"In testimony whereof, I have hereunto set my hand and affixed the seal of said Court at office in the City of Jeffer-

son in County and State aforesaid, this 3rd day of January, A. D. 1925.

"(Signed) Richard R. Nacy, Clerk of the Circuit Court of Cole County, Missouri. (Seal of said Circuit Court.)"

[File endorsement omitted.]

[File endorsement omitted]

[fol. 10] IN THE SUPREME COURT OF MISSOURI

[Title omitted]

Appellant's Abstract of the Record—Filed March 14, 1925

On November 10th, 1922, plaintiffs, Aetna Insurance Company, et al., filed their petition in the office of the Circuit Clerk of Cole County, Missouri, in words and figures as follows, caption omitted, to-wit:

PETITION—Filed November 10, 1922

The plaintiffs state that the plaintiffs, American Central Insurance Company, Citizens Insurance Company and Liberty Fire Insurance Company, are corporations organized under the laws of the State of Missouri and authorized [fol. 11] by their charters to conduct the business of fire, lightning, hail and windstorm insurance in the State of Missouri and elsewhere, and have their principal offices and places of business in the City of St. Louis and State of Missouri; that the plaintiff, Equity Fire Insurance Company is also a corporation organized under the laws of the State of Missouri, and elsewhere, and has its principal office and place of business in the City of Kansas City and State of Missouri; that the other above named plaintiffs are all corporations organized for the purpose of conducting the said business of fire, lightning, hail and windstorm insurance under the laws of various states of the United States other than Missouri, or under the laws of foreign countries, and that the states and countries under the laws of which they are respectively organized and the places in which they have, respectively, their principal offices and places of business are as follows, to-wit:

Name of company	State or county under the laws of which incorporated	Principal office and place of business in
[fol. 12] Aetna Insurance Company	Connecticut	Hartford.
Agricultural Insurance Company	New York	Watertown.
Alliance Insurance Company	Pennsylvania	Philadelphia.
American Alliance Insurance Co.	New York	New York.
American Central Insurance Company	Missouri	St. Louis.
American Eagle Fire Insurance Company	New York	New York.
American Insurance Company	New Jersey	Newark.
Automobile Insurance Company	Connecticut	Hartford.
Assurance Company of America	New York	New York.
Abeille Fire Insurance Company of Paris	France	Paris.
Boston Insurance Company	Massachusetts	Boston.
Buffalo Insurance Company	New York	Buffalo.
British General Insurance Co. of London, Eng.	Great Britain	London.
Bankers & Shippers Fire Insurance Company	New York	New York.
California Insurance Company	California	San Francisco.
[fol. 13] Camden Fire Insurance Association	New Jersey	Camden.
Citizens Insurance Company	Missouri	St. Louis.
City of New York Insurance Company	New York	New York.
Cleveland National Fire Insurance Company	Ohio	Cleveland.
Century Insurance Company, Lt.	Great Britain	Edinburgh.
Central States Fire Insurance Company	Kansas	Wichita.
Columbia Insurance Company	New Jersey	Jersey City.
Commercial Union Fire Insurance Company	New York	New York.
Commonwealth Insurance Company of New York	New York	New York.

Concordia Fire Insurance Company of Milwaukee	Wisconsin	Milwaukee.
Connecticut Fire Insurance Company	Connecticut	Hartford.
Continental Insurance Company	New York	New York.
County Fire Insurance Company of Philadelphia	Pennsylvania	Philadelphia.
Detroit Fire & Marine Insurance Company	Michigan	Detroit.
Dubuque Fire & Marine Insurance Company	Iowa	Dubuque.
Equitable Fire and Marine Insurance Company	Rhode Island	Providence.
Federal Insurance Company	New Jersey	Jersey City.
Fidelity-Phenix Fire Insurance Company of New York	New York	New York.
[fol. 14] Employers Fire Insurance Company	Massachusetts	Boston.
Merchants Insurance Company	Rhode Island	Providence.
Carolina Insurance Company	New York	New York.
Twin City Fire Insurance Company	Minnesota	Minneapolis.
Fire Association of Philadelphia	Pennsylvania	Philadelphia.
Fireman's Fund Insurance Company	California	San Francisco.
Firemen's Insurance Company of Newark, New Jersey	New Jersey	Newark.
Franklin Fire Insurance Company of Philadelphia	Pennsylvania	Philadelphia.
Girard Fire & Marine Insurance Company	Pennsylvania	Philadelphia.
Glens Falls Insurance Company	New York	Glens Falls.
Globe & Rutgers Fire Insurance Company	New York	New York.
Granite State Fire Insurance Company	New Hampshire	Portsmouth.
Great American Insurance Company	New York	New York.
Great Lakes Insurance Company	Illinois	Chicago.
Guaranty Fire Assurance Corporation	New York	New York.
Hanover Fire Insurance Company	New York	New York.
Hartford Fire Insurance Company	Connecticut	Hartford.

Name of company	State or county under the laws of which incorporated	Principal office and place of business in
Home Fire & Marine Insurance Company	California	San Francisco.
Home Insurance Company	New York	New York.
[fol. 15] Hudson Insurance Company	New York	New York.
Insurance Company of North America	Pennsylvania	Philadelphia.
Insurance Company of the State of Pennsylvania	Pennsylvania	Philadelphia.
Imperial Assurance Company	New York	New York.
Importers & Exporters Insurance Company of New York	New York	New York.
London & Scottish Assurance Corporation, Ltd.	Great Britain	London.
Marquette National Fire Insurance Company	Illinois	Chicago.
Massachusetts Fire and Marine Insurance Company	Massachusetts	Boston.
Mechanics and Traders Insurance Company	Louisiana	New Orleans.
Mechanics Insurance Company of Philadelphia	Pennsylvania	Philadelphia.
Mercantile Insurance Company of America	New York	New York.
Merchants Fire Assurance Corporation	New York	New York.
Michigan Fire & Marine Insurance Company	Michigan	Detroit.
Milwaukee Mechanics' Insurance Company	Wisconsin	Milwaukee.
Minneapolis Fire and Marine Insurance Company	Minnesota	Minneapolis.
Maryland Motor Car Insurance Company	Maryland	Baltimore.
Marine Insurance Company, Ltd.	Great Britain	London.
National Ben Franklin Fire Insurance Company	Pennsylvania	Pittsburgh.
[fol. 16] National Fire Insurance Company of Hartford	Connecticut	Hartford.
National Liberty Insurance Company of America	New York	New York.
National Union Fire Insurance Company	Pennsylvania	Pittsburgh.
Newark Fire Insurance Company	New Jersey	Newark.

New Brunswick Fire Insurance Company	New Jersey	New Brunswick.
New Jersey Fire Insurance Company	New Jersey	Newark.
New Hampshire Fire Insurance Company	New Hampshire	Manchester.
Niagara Fire Insurance Company	New York	New York.
Northern Insurance Company of New York	New York	New York.
North River Insurance Company	New York	New York.
Northwestern National Insurance Company	Wisconsin	Milwaukee.
Old Colony Insurance Company	Massachusetts	Boston.
Orient Insurance Company	Connecticut	Hartford.
Pennsylvania Fire Insurance Company	Pennsylvania	Philadelphia.
Phoenix Insurance Company	Connecticut	Hartford.
Providence Washington Insurance Company	Rhode Island	Providence.
Queen Insurance Company of America	New York	New York.
Reliance Insurance Company of Philadelphia	Pennsylvania	Philadelphia.
Rhode Island Insurance Company	Rhode Island	Providence.
[fol. 17] Safeguard Insurance Company of New York	New York	New York.
St. Paul Fire and Marine Insurance Company	Minnesota	St. Paul.
Security Insurance Company of New Haven	Connecticut	New Haven.
Springfield Fire and Marine Insurance Company	Massachusetts	Springfield.
Standard Fire Insurance Company	Connecticut	Hartford.
Standard Fire Insurance Company of New Jersey	New Jersey	Trenton.
Star Fire Insurance Company	New York	New York.
Stuyvesant Fire Insurance Company	New York	New York.
United States Fire Insurance Company	New York	New York.
United States Merchants & Shippers Insurance Co.	New York	New York.
Westchester Fire Insurance Company	New York	New York.

Name of company	State or country under the laws of which incorporated	Principal office and place of business in
Atlas Assurance Company, Ltd.	Great Britain	London.
British American Assurance Company	Canada	Toronto.
Caledonian Insurance Company	Great Britain	Edinburgh.
Commercial Union Assurance Company	Great Britain	London.
Eagle, Star and British Dominions Insurance Company, Ltd.	Great Britain	London.
Fidelity Union Fire Insurance Company	Texas	Dallas.
Great Western Fire Insurance Company	Illinois	Chicago.
[fol. 18] Indemnity Mutual Marine Assurance Company	New York	New York.
London & Provincial Marine & General Insurance Company	England	London.
National Security Fire Insurance Company	Nebraska	Omaha.
Omaha Liberty Insurance Company	Nebraska	Omaha.
Potomac Insurance Company of the District of Columbia	District of Columbia	Washington.
Superior Fire Insurance Company	Pennsylvania	Pittsburgh.
Independence Insurance Company	Pennsylvania	Philadelphia.
General Fire Assurance Company	France	Paris.
Law Union and Rock Insurance Company, Ltd.	Great Britain	London.
Liverpool and London and Globe Insurance Company, Ltd.	Great Britain	Liverpool.
London and Lancashire Fire Insurance Company, Ltd.	Great Britain	Liverpool.
London Assurance Corporation	Great Britain	London.
Nationale Fire Insurance Company of Paris	France	Paris.
Netherlands Fire and Life Insurance Company	Holland	The Hague.

North British & Mercantile Insurance Company	Great Britain	London.
Northern Assurance Company, Ltd.	Great Britain	London.
[fol. 19] Norwich Union Fire Insurance Society, Ltd.	Great Britain	Norwich.
Palatine Insurance Company	Great Britain	London.
Patriotic Assurance Company, Ltd.	Great Britain	Dublin.
Phenix Fire Insurance Company	France	Paris.
Phoenix Assurance Company, Ltd.	Great Britain	London.
Royal Exchange Assurance	Great Britain	London.
Royal Insurance Company	Great Britain	London.
Scottish Union and National Insurance Company	Great Britain	Edinburgh.
Sun Insurance Office	Great Britain	London.
Svea Fire and Life Insurance Company, Ltd.	Sweden	Gothenburg.
Tokio Marine and Fire Insurance Company	Japan	Tokio.
Union Assurance Society, Ltd.	Great Britain	London.
State Assurance, Ltd.	Great Britain	Liverpool.
Urbaine Fire Insurance Company	France	Paris.
Union Fire Insurance Company	France	Paris.
Western Assurance Company	Canada	Toronto.
Yorkshire Insurance Company, Ltd.	Great Britain	York.
United Firemen's Insurance Company	Pennsylvania	Philadelphia.
Victory Insurance Company of Philadelphia	Pennsylvania	Philadelphia.
[fol. 20] Pacific Fire Insurance Company of New York	New York	New York.
Sterling Fire Insurance Company	Indiana	Indianapolis.
Union Insurance Society of Canton, Ltd.	Ordinances of Hong Kong	Canton.
Chicago Fire & Marine Insurance Company	Illinois	Chicago.

Name of company	State or county under the laws of which incorporated	Principal office and place of business in
Excelsior Insurance Company	New York	Syracuse.
Union Marine Insurance Company	Great Britain	Liverpool.
Equity Fire Insurance Company	Missouri	Kansas City.
Liberty Fire Insurance Company	Missouri	St. Louis.
Colonial Assurance Company	New York	New York.
American Union Insurance Company	New York	New York.
East & West Insurance Company	Connecticut	New Haven.
The Eagle Fire Company	New York	New York.
Henry Clay Fire Insurance Company	Kentucky	Lexington.
Philadelphia Fire & Marine Ins. Co.	Pennsylvania	Philadelphia.

[fol. 21] Plaintiffs further state that they, and each of them, are duly authorized and licensed to conduct the business of fire, lightning, hail and windstorm insurance in the State of Missouri, pursuant to the laws thereof, and that they, and each of them, since their incorporation under the laws of the State of Missouri, or since their admission respectively, to conduct said business of fire, lightning, hail and windstorm insurance in the State of Missouri, have in all respects obeyed all of the laws of this state applicable to such insurance companies, including the provisions of an Act entitled "An Act to regulate insurance against loss or damage by fire, lightning, hail, windstorm and sprinkler leakage, and the rates of premium thereon, and to provide for the making and maintenance of public records in relation thereto, with an emergency clause," which said Act was approved on the 20th day of March, 1915, and now constitutes Sections 6270 to 6288 inclusive of the Revised Statutes of the State of Missouri for the year 1919.

Plaintiffs further state that the defendant, Ben C. Hyde, is the duly appointed, qualified and acting Superintendent of the Insurance Department of the State of Missouri, and has his office in and is a resident of the City of Jefferson City, in the County of Cole, in said state.

The plaintiffs further state that, pursuant to the provisions of the Act above referred to, a rating and actuarial bureau was organized and established, known as the Missouri Inspection Bureau, of which plaintiffs, and each of them, are members; that said Missouri Inspection Bureau [fol. 22] is, and has been ever since its organization, engaged in the making of rates and estimates of rates for fire, lightning, hail and windstorm insurance upon property located in this state, and has as such rating bureau fully complied with all of the requirements obligatory upon a rating bureau under the terms and provisions of the said Act, and did within ninety days after the taking effect of said Act file with the then Superintendent of the Insurance Department of this state copies of all public rating records, and has since said time filed with the then Superintendent of Insurance of this state notice of all changes made in said public rating records; and plaintiffs allege that the public rating records so filed by the Missouri Inspection Bureau on behalf of its members, as changed or modified by the no-

tice of changes therein as aforesaid, became and were the legal rates for fire, lightning, hail and windstorm insurance upon property in this state, to be charged and collected by the plaintiffs, and each of them, on all policies of insurance of the character above specified issued by them upon property in this state. And plaintiffs allege that the rates shown by the public rating records so filed, pursuant to the requirements of said Act, as modified by subsequent changes therein, notices of which said changes had been duly filed as aforesaid, are not excessive or unreasonably high, but are in every case reasonable, and in the judgment of said Missouri Inspection Bureau are in each case and in fact commensurate with the various risks to which they are applicable.

[fol. 23] Plaintiffs further state that the business of insurance is conducted by plaintiffs, and each of them through local agents, who issue policies of insurance in the form filed in the office of the Superintendent of the Insurance Department of the State of Missouri, and approved by him, for a consideration therein specified, known as the premium; that the rate of premium is the sum charged for each $100.00 of insurance; that all local agents of plaintiffs, and each of them, in the State of Missouri charge and collect on all insurance policies issued by them a premium based upon the rates shown by the public rating records filed with the Superintendent of the Insurance Department by the Missouri Inspection Bureau as aforesaid, that such local agents are paid as their compensation a commission on premium collected on all policies written by them; that the plaintiffs, and each of them, are obliged to pay to the State of Missouri a tax based upon the gross premium receipts upon business written in this state, and are also obliged to pay to the state license fees of various kinds for their employees and agents, and have been and are obliged to pay to the federal government the taxes imposed by the Federal Revenue Laws upon insurance companies conducting a fire, lightning, hail and windstorm insurance business; that the plaintiffs, and each of them, employ state or special agents to supervise their business in this state, and maintain salvage corps in the cities of St. Louis and Kansas City and contribute to the support of various inspection and service organizations in this state.

[fol. 24] Plaintiffs further allege that each of the plaintiffs, in order to conduct its business in the State of Missouri, has been obliged to, and has established local agencies in the various cities and towns throughout the state, at large cost and expense to the plaintiffs, and each of them, and that the agencies so established are of great value to the plaintiffs, and each of them; that without such agencies so established, it would be impossible for the plaintiffs, or any of them, to conduct their business of insurance in the State of Missouri, and that said established agency plants of the plaintiffs, and each of them, are of great value to the plaintiffs, respectively, the exact value thereof being dependent upon the number of agencies of each of the plaintiffs and the expense of establishing the same; that said value runs from ten thousand dollars ($10,000.00) in the case of a small company having a comparatively small number of agents, to fifty thousand dollars ($50,000.00) for a large company, having agencies in practically all of the towns and cities of the state, and that the good will of the business of each of the plaintiffs established in this state in each of such local agencies of the plaintiff, respectively, is of great pecuniary value to each of them.

Plaintiffs further state that from the experience of all stock fire companies doing business in the State of Missouri during a long period of years, it has been ascertained that the expense to each of the plaintiffs of conducting its business in the State of Missouri, including commissions to local agents, state taxes and license fees, federal taxes, [fol. 25] salaries of state agents, travelling expenses, telegraph and telephone tolls, expenses of adjusting losses, cost of printing and stationery, cost of maintaining its membership in the Missouri Inspection Bureau and other inspection and service organizations, and home office expenses of all kinds, amounts under normal conditions and in normal times to from 35% to 45% of the earned premiums in each year; and that the aggregate cost of doing business in the State of Missouri for all of the plaintiffs amounts, under normal conditions and in normal times, to approximately 42% of the aggregate earned premiums in this state of all of the plaintiffs in each year; that the period of from 1917 to 1921, inclusive, has been abnormal, in that during all of said time the expenses of doing business in the State of

Missouri have been increased above the normal expenses, by reason of the fact that wages and salaries of all kinds, traveling expenses, taxes (state and federal), cost of printing and stationery, and office expenses of every character, have been largely increased above what they were prior to the year 1917, and plaintiffs allege that for the period from 1917 to 1921, inclusive, the cost of doing business in the State of Missouri, amounted to approximately 44% of the aggregate premiums earned by the plaintiffs for all insurance written by them during said years, that the losses of the plaintiffs under their respective policies of insurance vary from year to year, depending upon the happening of the casualties insured against and the value of the property damaged or destroyed and covered by such policies. [fol. 26] Plaintiffs further allege that from the very nature of the business in which they are engaged, it is essential that their solvency be maintained at all times, so that all losses incurred under policies issued by them may be paid; and to that end each of the plaintiffs is required by the laws of the State of Missouri to maintain and does maintain at all times a fund equal to the unearned premiums on all outstanding policies; and to further assure their solvency, it has been ascertained from experience of all fire insurance companies during a long period of years that it is an essential of safe underwriting that a surplus over and above its capital stock be accumulated and maintained by each of the plaintiffs out of the premium receipts to meet the ever present hazard of conflagrations and catastrophes; that it is specially provided by the Act above referred to that in determining the question of fair and reasonable rates in this state for insurance of the kind written by plaintiffs, and of the profits to which plaintiffs are entitled from their underwriting, the Superintendent of the Insurance Department shall give proper and reasonable consideration to the conflagration liability, both within and without the State of Missouri; that from the experience of all fire insurance companies, and in the opinion of those specially skilled in fire underwriting and who are familiar with the experience of fire insurance companies in the past throughout the United States, it has been determined that, to meet such conflagration hazard, a sum should be accumulated by each fire insurance company equal

to at least three per cent (3%) of the earned premiums [fol. 27] for each year, and it has been determined that to meet the catastrophe hazard in hail and windstorm insurance a sum should be accumulated by each insurance company equal to ten per cent (10%) of the earned premiums for each year.

Plaintiffs further represent that because of the exceedingly hazardous nature of the business of insurance, they, and each of them, are entitled to earn in each year a substantial underwriting profit; and plaintiffs allege that such underwriting profit on the business written by them, respectively, in the State of Missouri, should be at least five per cent (5%) of earned premiums.

Plaintiffs further state that the underwriting profit of an insurance company is determined by deducting from the premiums earned during any year, or term of years, the losses incurred and the expenses incurred during the same year, or term of years.

Plaintiffs further state that the period of five years, 1917 to 1921, inclusive, was a period of abnormal conditions in insurance, due to the effect of the European War, resulting in exceedingly high valuations being placed upon both real and personal property; and that of said period the years 1919 and 1920 were peculiarly abnormal, because during said years the said high valuations upon real and personal property reached their peak; that as a result of these abnormal conditions during said years 1919 and 1920, insurance premiums increased very greatly in volume, because of the larger amount of property at the enhanced valuations to be protected; and that during all of said period, [fol. 28] and particularly during the years 1919 and 1920, due to the conditions aforesaid fire losses were kept at a minimum; that as a result of the large volume of premiums received during said years 1919 and 1920, accompanied by small losses during the same period the ratio of losses incurred to premiums earned was much smaller than in other years during which records have been kept of the results of their business in the State of Missouri.

Plaintiffs further state that with the closing of the year 1920, and throughout the year 1921, valuations of both real and personal property declined rapidly from the high valuations placed upon them during the years 1919 and 1920,

resulting in a sharp decrease in premium receipts and an increase in losses, so that the result of the business of plaintiffs during the year 1921 was approximately what it had been prior to the abnormal years of 1919 and 1920. And plaintiffs allege that in ascertaining the experience of the plaintiffs in their business in the State of Missouri, the five year period, 1917 to 1921, inclusive, does not fairly reflect such business under normal conditions, because of the fact that the abnormal years, 1919 and 1920, are included in said period.

Plaintiffs further state, notwithstanding the fact that in the period of 1917 to 1921, inclusive, the abnormal years 1919 and 1920, were included, that the combined experience of all of the stock fire insurance companies in the State of Missouri on all classes of insurance was as follows, to-wit: The losses incurred were approximately 64.9% of [fol. 29] the earned premiums for said period; the expenses incurred were approximately 44.4% of the earned premiums for said period; that the incurred expenses plus the incurred losses were approximately 109.3% of the earned premiums during said period; that is, the combined experience of said companies in the State of Missouri, during the years 1917 to 1921, inclusive, upon all classes of insurance transacted by them was that for each $100.00 of premiums earned during said period said companies incurred losses and expenses of approximately $109.30; that the above figures make no allowance whatsoever for the accumulation of any fund in any amount to meet the conflagration and catastrophe hazards or any profit to plaintiffs.

Plaintiffs further allege that notwithstanding the facts and conditions aforesaid, and notwithstanding the fact that said companies have done business in the State of Missouri at an actual underwriting loss during the five year period preceding January 1st, 1922, and were not during said period able to accumulate from earnings in Missouri any sum whatsoever to meet the conflagration or catastrophe hazards or to pay any profit to said companies, the defendant, Ben C. Hyde, pretending to act under the provisions of Section 14 of the Act aforesaid (Section 6283, Revised Statutes of Missouri, 1919) did, on the 5th day of January, 1922, issue an order in words and figures following, to-wit:

[fol. 30] "Insurance Department, State of Missouri, City of Jefferson

Joshua Barbee, Deputy; R. E. Daly, Actuary; Wilbur P. Maring, Jr., Chief Clerk; Ben C. Hyde, Superintendent

"Missouri Inspection Bureau, Waterworth & Terry, Managers, Pierce Bldg., St. Louis, Missouri

Section 6283, Revised Statutes of Missouri, 1919, provides that the Superintendent of Insurance, upon his own motion, is empowered to investigate the necessity for a reduction in rates charged by the stock companies doing a fire, lightning, hail and windstorm insurance business in the State of Missouri. I have made such investigation and from such investigation and the underwriting experience reports of the companies filed with the Insurance Department of Missouri, it appears to me that the earnings in the State of Missouri of the stock fire insurance companies for the five years next preceding such investigation show that there has been an aggregate profit in excess of what is reasonable.

The Missouri Inspection Bureau is the rating and actuarial bureau through which the said stock companies maintain their public rating record as required by the laws of the State of Missouri. Therefore, you are notified as [fol. 31] the representative of the stock, fire, lightning, hail and windstorm insurance companies listed with or subscribers at the Missouri Inspection Bureau, a list of which is hereto attached, and through the Missouri Inspection Bureau, I desire to notify said companies, that I have this day ordered a reduction of fifteen per cent in the rates now authorized by the Missouri Inspection Bureau and charged by the aforesaid companies on the fire, lightning, hail and windstorm insurance business written in the State of Missouri, which reduction, in my judgment, will leave said companies a reasonable profit after giving proper and reasonable consideration to the conflagration liability within and without the state.

"The aforesaid reduction ordered shall take effect and be in operation on and after the 15th day of February, 1922, and shall be applied subject to the approval of the Superintendent of Insurance. If the companies do not

within thirty days from this order of reduction submit a class or classes to which the reduction shall apply.

Ben C. Hyde, Superintendent of Insurance.

Dated at Jefferson City, Missouri, this 5th day of January, 1922."

Which said order was served upon plaintiffs through the Missouri Inspection Bureau as their common agent.

That thereafter and on or about the 4th day of February, 1922, these plaintiffs filed in this Honorable Court their [fol. 32] certain bill in which certain allegations were made substantially as above set forth and further allegations were contained therein, which said bill is now on file in the Circuit Court of this county and reference thereto is made herein; said bill prayed the issuance by this Honorable Court of a temporary restraining order and injunction restraining the defendant herein from carrying out the provisions of the above order, which said prayer for temporary restraining order was granted, and restraining order issued; that thereafter on the 14th day of February, 1922, these plaintiffs and defendant, through their counsel, entered into a certain stipulation, which said stipulation is as follows, to-wit:

"In the Circuit Court of Cole County, Missouri, November Term, 1921

Aetna Insurance Company et al., Plaintiffs,

vs.

Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, Defendant

Stipulation

Whereas, Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, has this day withdrawn and revoked the order published and declared by him on the 5th day of January, 1922, effective February 15, 1922, reducing the rates of insurance charged by all stock fire insurance companies doing business in the State of Missouri on all fire, lightning, hail and windstorm busi-

ness written by them in this state; now, therefore, it is hereby stipulated by and between the parties hereto that the following order may be entered of record in this cause:

[fol. 33] 1. The above entitled cause is hereby dismissed, and the restraining order heretofore entered therein is hereby dissolved, and all liability under the bond given pursuant to the conditions of said restraining order is hereby satisfied and discharged, and the surety on said bond is hereby released.

2. It is further stipulated and agreed that the said Superintendent of the Insurance Department, defendant herein, may, not earlier than March 15, 1922, call a hearing to investigate the necessity for a reduction in rates charged by the stock fire insurance companies doing a fire, lightning, hail and windstorm insurance business in this state; that at such hearing the experience of said companies in the State of Missouri for the year 1921, shall be offered in evidence and considered by the Superintendent of the Insurance Department, together with such other evidence as may be offered in reaching his determination; that at the conclusion of such hearings the Superintendent of the Insurance Department will make findings of fact and announce his determination thereon; and that he shall, in writing, find all essential, material, and competent matters of fact disclosed by the evidence; that he shall make the following findings:

(a) What was the profit of said stock fire insurance companies during the five years preceding said investigation, including the year 1921;

(b) What is a reasonable profit on the business written in this state;

(c) What per cent of premiums received is allowed for the conflagration hazard;

[fol. 34] (d) What is the basis upon which earnings in Missouri, should be determined and ascertained;

(e) What is the ratio of expenses incurred to premiums earned in this state during said period;

(f) What is the ratio of losses incurred to premiums earned in this state during said period;

(g) What is the total amount of earned premiums during said period.

3. That if, based upon such findings of fact and the determination of the Superintendent of the Insurance Department, an order reducing the rates charged by such stock companies on all fire, lightning, hail and windstorm insurance business written by them in the State of Missouri be made by said Superintendent of the Insurance Department such order shall apply to all classes alike, and the said insurance companies, if dissatisfied with said order, will proceed to secure a review thereof by the trial de novo in the Circuit Court of Cole County, Missouri.

4. That no injunction shall be applied for in said matter restraining the enforcement of said order, but pending such review and until the final determination of said cause in whatever court it may be finally lodged, the rates in force prior to the making of such order shall be collected by such insurance companies, and such insurance companies shall give bond, conditioned and in such amount as the court may direct, to refund to the assured any excess of premiums collected by them if such order of the Superintendent of the Insurance Department be finally sustained by decree or judgment of a court of last resort.

[fol. 35] 5. That in such matter the question of the constitutionality of Sections 6283 and 6284, Revised Statutes of Missouri, 1919, shall not be raised, nor shall the legality of the hearing above provided for be questioned.

Bates, Hicks and Polonie, Seymour Edgerton, John S. Leahy, Attorneys for the Plaintiffs. Jesse W. Barrett, Attorney General; Merril E. Otis, Ass. Atty. Gen'l, Attorneys for the Defendant."

That in accordance with the provisions of said stipulation said former suit was dismissed on the 14th day of February, 1922.

That thereafter on, to wit, the 31st day of May, 1922, a hearing was had before the Superintendent of Insurance at Jefferson City, Missouri, for the purpose of investigating the necessity for a reduction in rates charged by the stock fire insurance companies doing a fire, lighting, hail and windstorm insurance business in the State of Missouri,

at which said hearing the plaintiffs herein, by their counsel, duly performed all the conditions in said stipulation as above set forth conditioned on their part to be performed; but that notwithstanding the said hearing and the stipulation governing the same, and the conditions in said stipulation for the findings to be made by the Superintendent of Insurance, said Superintendent failed and refused to carry out each and every of said stipulations on his part to be kept and performed, and wholly ignoring the same did on [fol. 36] the 9th day of October, 1922, issue his certain order providing for a reduction in rates charged by the stock fire insurance companies on fire, lightning, hail and windstorm insurance business in the State of Missouri, which said order reads as follows:

"Notice and Order of Reduction of Rates

Jefferson City, Missouri.

To Missouri Inspection Bureau, Waterworth and Terry, Managers, Pierce Building, St. Louis, Missouri, and to all stock, fire, lightning, hail and windstorm insurance companies doing business in the State of Missouri:

Section 6283 Revised Statutes of Missouri, 1919, provides that the Superintendent of Insurance, upon his own motion, is empowered to investigate the necessity for a reduction in rates charged by the stock insurance companies doing a fire, lightning, hail and windstorm insurance business in the State of Missouri.

On January 5, 1922, after such investigation as authorized by said section and other laws relating thereto, the undersigned Superintendent of Insurance of the State of Missouri did make an order relating to the reduction of fire insurance rates in the State of Missouri, giving due notice thereof and taking such other action as required by law.

Thereafter a suit was filed in the Circuit Court of Cole County, Missouri, entitled Aetna Insurance Company et al. [fol. 37] Plaintiff vs. Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, Defendant, whereby the plaintiffs sought to enjoin defendant from the enforcement of said order.

While said suit was pending and before a final determination thereof, the plaintiffs and the defendant entered

into a certain stipulation providing in effect that said suit be dismissed and same was dismissed upon the condition that the order of reduction of rates above referred to be withdrawn and revoked, and same was withdrawn and revoked.

It was further provided in said stipulation between said parties that thereafter and not earlier than March 15th, 1922, the undersigned Superintendent of Insurance would call a further hearing to investigate the necessity for a reduction in rates charged by the stock fire insurance companies doing a fire, lighting, hail and windstorm insurance business in the State of Missouri; and that at such hearing, if and when called, said companies would appear by counsel and would produce such evidence as might be required by the Insurance Department and such other evidence as said companies might see fit to present bearing upon such question; that upon the production of such evidence the Superintendent of insurance would at the conclusion of such hearing make certain findings of facts set out in said stipulation and announce his determination thereon in writing.

Pursuant to the terms of said stipulation and after the 15th day of March, 1922, the undersigned Superintendent [fol. 37a] of Insurance made his request for information in writing of all stock fire insurance companies, affected by said order heretofore made, and of Messrs. Waterworth and Terry, managers of the Missouri Inspection Bureau, representing and acting for said companies; that said written request specified in particular the information desired by the Insurance Department, same relating to the years 1917, 1918, 1919, 1920 and 1921.

The undersigned superintendent further requested in person of said companies and their representatives certain other information relating to the experience of said companies in Missouri during said five years referred to.

Notwithstanding said written request and said other requests, said companies and said Waterworth and Terry, managers of the Missouri Inspection Bureau, failed and refused, and still fail and refuse, to furnish the information requested and in the form requested; that such information as has been given to the Insurance Department is fragmentary, incomplete, confusing, conflicting, erroneous and misleading, and fails to supply the necessary facts and

data to enable the Superintendent of Insurance to make and determine the specific findings provided for in the stipulation above referred to, and such findings accordingly cannot be made.

I have, however, made a full and complete investigation, as provided for by law, of the underwriting experience of the stock companies referred to with respect to the business transacted by them in the State of Missouri during the years 1917, 1918, 1919, 1920 and 1921. Such investigation [fol. 37b] is based upon the sworn statements filed with the Insurance Department during said years by said companies as required by law and from such other information as has been available. Such investigation shows that the aggregate profits of said companies upon their Missouri business during said period is in excess of what is reasonable.

During said five years, said stock companies collected on Missouri business net premiums amounting to $81,067,318.00.

During the same period the interest on the capital and surplus of said companies, prorated to the Missouri, amounted to $2,801,660.00 and during the same period the interest on unearned premium reserves, on Missouri business, amounted to $2,418,596.00. This means a total income on Missouri business during said five-year period of $86,287,574.00.

During the same period these companies paid losses in Missouri, $45,066,124.00. It is the opinion of this department that these losses were unnecessarily large because of over-insurance and lack of adequate inspection.

This makes a difference of $41,221,450.00 between the total amount collected and the amount paid in losses. This item, $41,221,450.00, represents the amount left for profits and expenses, as shown by the reports of the companies, and is 47.77 per cent of the total income as reported. The above amount, $41,221,450.00 is made up of expenses $32,534,617.00, and profits $8,686,833.00, according to the reports of the companies. I find that this expense item is excessive, and that a proper and reasonably economical ad- [fol. 37c] ministration of the business will result in greatly increased profits even under lower premium rates. In other words, there is a large potential or unrevealed profit in the excessive expenses. Any other interpretation ren-

ders the rate regulation law absolutely null and of no effect. If the companies can increase their expenses without limit and then claim a reasonable profit in excess of such expenses any law regulating rates is unavailing. I find that these excessive expenses are largely the result of the following causes:

1. Certain excessive and discriminating commissions paid.

2. Expenses of marine and inland business unjustly and illegally apportioned to Missouri.

3. Unfair and improper allocation of over head expenses.

4. Improper charge of income and excess profit taxes. These items amount in the aggregate to not less than $5,000,000.

The laws of the State of Missouri contain no specific provision for a regulation of the expense of stock fire insurance companies, nor to prevent over-insurance, nor to require proper inspection. The authority to regulate the expense, however, is clearly implied in the law relating to the regulation of rates. It is my opinion and find that a percentage of 47.77 per cent for profits and expenses is unreasonable and excessive. It is my duty, therefore, to make such order as the law permits me to make; that it, a reduction of rate, leaving it to the companies to adjust the expenses accordingly, and to reduce the losses through {fol. 37d} proper inspection and the elimination of over-insurance. Any other interpretation of the law would mean that the fire insurance of this state is written on a cost plus basis, with no limit to the cost, and no obligation or incentive on the part of the stock fire insurance companies to reduce losses and expenses.

And additional reason for reduction in rate at this time arises from the fact that an increase in rate authorized in January, 1920, had not at the close of 1921 been fully applied. The full application of this increase which, unless modified, will be the authorized rate, will result during 1922 and the years following in an increase of the premiums now charged of approximately eight per cent.'

Therefore, I find that the present rates are excessive and that they produce as hereinbefore stated profits to the companies in excess of what is reasonable, and I further find that a reduction of ten per cent in the present rates will result in profits that are reasonable." Accordingly you and each of you are hereby notified that I have this day ordered a reduction of ten per cent in the rates now charged by the aforesaid companies on fire, lightning, hail and windstorm insurance business written in the State of Missouri, which reduction, in my judgment, will still leave said companies a reasonable profit after giving proper and reasonable consideration to the conflagration liability both within and without the state.

[fol. 37e] The aforesaid reduction order shall take effect and be in operation on and after the 15th day of November, 1922, and shall be applied subject to the approval of the Superintendent of Insurance. If the companies do not within thirty days from this order of reduction submit a class or classes which meets the approval of the Superintendent of Insurance, the superintendent will designate the class or classes to which the reduction shall apply.

Ben C. Hyde, Superintendent of Insurance.

Dated at Jefferson City, Missouri, this 9th day of October, 1922."

The defendant, Superintendent of Insurance in violation of the terms of the stipulation above set forth has wholly failed and refused to state in writing in said order his findings as to any of the matters of fact specifically provided for in the stipulation above referred to and particularly in paragraphs lettered "(a)" to "(g)," inclusive, therein.

Plaintiffs allege that the said order of the defendant of October 9, 1922, hereinabove set out is in violation of the terms of said stipulation and said order is unreasonable, unjust, illegal and void for the reason that the effect thereof is to reduce the rates of premium to be charged and collected by plaintiffs, and each of them, upon all policies of fire, lightning, hail and windstorm insurance issued by them, respectively, covering property in the State of Missouri, to a point below what is reasonable and adequate to the various

risks covered by such policies and for the reason that the [fol. 37f] rates of premium which plaintiffs would be legally entitled to charge and collect in this state after the 15th day of November, 1922 (the effective date of said order) if said order be not cancelled and set aside by this court, would be unreasonably low and not commensurate with the risks to be assumed by plaintiffs under policies of insurance to be issued by them, and would compel plaintiffs to do business in Missouri without receiving a reasonable profit, or any profit therefrom, but at an actual loss; and the rates fixed by said order would be confiscatory, and that the enforcement of said order would result in irreparable damage and injury to plaintiffs, and each of them. And plaintiffs further allege that if said order were enforced they would either be obliged to comply with the terms of said illegal and void order and issue policies of fire, lightning, hail and windstorm insurance upon property in the State of Missouri in compliance with the terms thereof, and write such insurance at an actual loss or cease the writing of fire, lightning, hail and windstorm insurance in the State of Missouri; that if they are obliged, because of said order, to cease writing insurance in the State of Missiouri, the various large sums of money expended by plaintiffs in the establishment of their respective agency plants as aforesaid will be wholly lost, and the good will of the business of the plaintiffs and each of them totally destroyed; that in either event the plaintiffs, and each of them would be deprived of their property without just compensation, and without due process of law, contrary to the [fol. 38] provisions of the constitution of the State of Missouri, as guaranteed by Section XXX, Article II thereof, and contrary to the provisions of that portion of Section I of the Fourteenth Amendment of the Constitution of the United States which provides that "No State * * * shall * * * deprive any person of life, liberty or property without due process of law."

Plaintiffs further state that defendant, by his said order of October 9th, 1922, states and finds that the aggregate profits of the plaintiff companies upon their Missouri business during said period from 1917 to 1921 inclusive, were in excess of what is reasonable; that defendant in making

and arriving at said finding, takes into account $2,801,660.00 of alleged interest earnings on the capital and surplus of said companies pro rated to Missouri, and $2,418,596.00 of alleged interest earnings on unearned premium reserves on Missouri business. Plaintiffs state that said alleged interest earnings were from sources other than underwriting, and were not earnings of the plaintiff companies within the State of Missouri, and were not collected by the plaintiff companies in the State of Missouri. That the defendant's said order, in so taking into account said alleged interest earnings and each class of said interest earnings, in arriving at the amount of plaintiffs' earnings in the State of Missouri, and in ordering a reduction of rates based thereon, deprives the plaintiffs and each of them of their property and property rights without due process of law, and denies to the plaintiffs and each of them [fol. 39] the equal protection of the laws, and is confiscatory, unreasonable, unconstitutional and void, and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, providing that no state shall deprive any person of property without due process of law, nor deny any person within its jurisdiction the equal protection of the laws; and in violation of Section 30 of Article II of the Constitution of Missouri; providing that no person shall be deprived of property without due process of law.

Plaintiffs further state that the defendant by his said order of October 9th, 1922, bases his findings and determination of plaintiffs' alleged profit, during said five year period, upon the amount of premiums alleged to have been received or collected, and the amount of losses and expenses alleged to have been paid, by plaintiffs during said five year period, instead of upon the amount of premiums earned and losses and expenses incurred by plaintiff companies during said period. That by so doing the defendant by his said order deprives the plaintiffs and each of them of their property and property rights without due process of law, and denies to them the equal protection of the laws, and thereby violates the aforesaid provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States and Section 30 of Article II of the Constitution of Missouri.

Plaintiffs further state that the defendant by his said order of October 9th, 1922, states and finds that the expenses of the plaintiff companies during said five year period were excessive, and defendant by said order under [fol. 40] takes indirectly to regulate plaintiffs' expenses and inspection of risks, and to limit the amount of insurance plaintiffs may write, and to force and compel plaintiffs to reduce their expenses, both within and without the State of Missouri, on penalty of continuing to do business in Missouri at a loss. That the defendant by his said order, and by his attempted regulation of plaintiffs' expenses and inspection and limitation of the amount of insurance to be written unlawfully attempts to exercise visitorial powers over the internal management of the plaintiff companies, and invades the general inherent right of said plaintiff companies to conduct and manage their own affairs; and his said order constitutes an unreasonable and confiscatory interference with plaintiffs' inherent right of management thereof, and thereby deprives plaintiffs of their property, property rights and liberty without due process of law, and denies to them the equal protection of the laws, in violation of the aforesaid provisions of Section 1 of the Fourteenth Amendment of the Constitution of the United States and Section 30 of Article II of the Constitution of the State of Missouri; and that defendant thereby impairs the obligation of contracts existing between the plaintiff companies and each of them respectively and other persons, firms and corporations, in violation of Section 10 of Article I of the Constitution of the United States providing that no state shall pass any law impairing the obligation of contracts.

Plaintiffs further state that the figures set forth in defendant's order of October 9, 1922, as to premiums, losses [fol. 41] and expenses during the five year period from 1917 to 1921 inclusive are incorrect; that whereas defendant's said figures indicate that plaintiffs made a profit during that period in the State of Missouri, yet, in truth and in fact plaintiffs sustained a loss during said period in the State of Missouri of approximately 9.3% of the amount of their earned premiums during that period, as above set forth.

That defendant's said order of October 9, 1922 incorrectly and without any authority of law takes into account

two million eight hundred one thousand and six hundred sixty dollars ($2,801,660.00) as alleged interest on capital and surplus pro rated to Missouri, and two million, four hundred eighteen thousand and five hundred ninety-six dollars ($2,418,596.00) as interest on unearned premiums on Missouri business, in arriving at the amount of plaintiff's supposed profits. Plaintiffs state that said amounts do not constitute any part of plaintiffs' earnings in the State of Missouri, nor any part of the aggregate collections by plaintiffs in said state, for the five-year period of 1917 to 1921, inclusive, and therefore cannot be taken into account in arriving at the amount of plaintiffs' earnings or losses in Missouri during said period.

Plaintiffs further state that defendant's said order of October 9, 1922 is upon its face based upon the alleged amount of premiums received and losses and expenses paid during said five-year period. Plaintiffs state that this is not a true, accurate or lawful method of arriving at the amount of plaintiffs' earnings or losses during said five-
[fol. 42] year period. That the true amount of plaintiffs' earnings or losses can only be ascertained upon the basis of the amount of premiums earned and the amount of losses and expenses incurred during said period.

Plaintiffs further state that in the event that Section 6283, Revised Statutes of Missouri, 1919, should be so construed as to authorize the Superintendent of the Insurance Department, in determining whether there has been an aggregate profit in excess of what is reasonable during the five-year period, and ordering a reduction of rates based thereon, to take into account interest earnings of the stock fire insurance companies upon any part of their capital or surplus or upon unearned premiums or unearned premium reserves on their Missouri business, or to take into account earnings of said companies from any source other than from underwriting; or to base his determination of profit or loss upon the basis of premiums received and losses and expenses paid by said companies (as distinguished from the basis of premiums earned and losses and expenses incurred), then in any such event said Section 6283 would be unconstitutional and void and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that such construction of said statute

would render it confiscatory and would deprive the plaintiffs, and each of them, of their property and property rights without due process of law, and would deny to them the equal protection of the laws; and said section would in such event be unconstitutional and void and in violation [fol. 43] of Section 30 of Article II of the Constitution of the State of Missouri, in that such construction of said statute would render it confiscatory and would deprive the plaintiffs, and each of them, of their property and property rights without due process of law.

Plaintiffs further state that upon the figures stated in the defendant's order, the defendant finds that the total income of the plaintiff insurance companies on Missouri business during said five-year period was $86,287,574, and that said companies realized a profit thereon of $8,686,833. While plaintiffs deny the accuracy or correctness of said figures, plaintiffs state that even if said figures were correct, the reduction of ten per cent in rates ordered by the defendant's rate reduction order of October 9, 1922, would wipe out and take away from plaintiffs all profit on their Missouri business and would compel them to do business in Missouri without a reasonable profit or any profit, and at rates of premium which would be unjust, unreasonable and confiscatory. So that plaintiffs state that upon the defendant's own figures, the reduction of rates in said order is not warranted or justified. And plaintiffs further state that defendant's order is based upon his opinion and finding that plaintiff's expenses during said five-year period were excessive, and upon the assumption that defendant is authorized by law to regulate the expenses of plaintiffs and their inspection of risks, and to limit the amount of insurance they may write, in conducting their business; and defendant by his order undertakes indirectly to regulate plaintiffs' expenses and inspection, and to limit the amount of insur- [fol. 44] ance they may write, and to force and compel plaintiffs to reduce their expenses, on penalty of continuing to do business in Missouri at a loss. That while defendant's order concedes that the power to regulate expenses is not specifically granted to him by the laws of Missouri, yet he finds that this authority is clearly implied in the law relating to the regulation of rates, and by his order defendant undertakes, not directly but indirectly, to assert and

exercise the power and authority which he finds is implied in said law. Plaintiffs state that defendant is not authorized by law, either expressly or by implication, directly or indirectly, to regulate the expenses of the plaintiffs or their inspections of risks, or to limit the amount of insurance they may write, in conducting their business.

Plaintiffs further state that if Section 6283, Revised Statutes, 1919, were so construed as to authorize the Superintendent of the Insurance Department to regulate the expenses of stock fire insurance companies, domestic or foreign, doing business in Missouri, or their inspections of risks or the amount of insurance they may write, then in such event said statute would be unconstitutional and void and in violation of Section 1 of the Fourteenth Amendment to the Constitution of the United States, and Section 30 of Article II of the Constitution of the State of Missouri, in that said statute would in such event give to said Superintendent of the Insurance Department visitorial powers over the internal management of said companies, and would invade the general right of said companies to conduct and [fol. 45] manage their own affairs, and would be an unreasonable interference with their right of management thereof, and would deprive them of their property, property rights and liberty without due process of law, and would deny to them the equal protection of the laws; and said Section 6283 would be unconstitutional and void and in violation of Section 10 of Article I of the Constitution of the United States in that it would impaid the obligation of contracts existing between said companies respectively and others.

Plaintiffs further state that the plaintiffs' expenses in the State of Missouri during said five-year period were not excessive or unreasonable, nor were they in excess of the rate of expense of insurance companies generally engaged in fire, lightning, hail and windstorm insurance business in other states or throughout the United States during the same period.

Plaintiffs further state that although defendant in his order purports to give consideration to the conflagration liability, yet in truth and in fact if the rates fixed by said order were applied there would be no allowance whatever to plaintiffs for the conflagration liability under fire and light-

ning insurance policies or the catastrophe liability under hail and windstorm insurance policies.

Plaintiffs further state that said order is based in part upon the fact that an increase in rates was authorized in January, 1920 by the then Superintendent of Insurance of Missouri, which increase it is said in the order had not been fully applied at the close of 1921. Plaintiffs state that said increase of January, 1920 was allowed by the then [fol. 46] Superintendent of Insurance because the plaintiff insurance companies had lost money in the period of five years last preceding said increase; that although said increase was largely applied on business written by plaintiffs during 1920 and 1921, yet notwithstanding said increase the plaintiffs did not realize any profit, but actually sustained loss, on their Missouri business during said two year period. Plaintiffs further state that said increase of January, 1920 has been in part offset by reductions in rates on certain classes of insurance voluntarily made by plaintiffs at the time of and since said increase of January, 1920.

Plaintiffs further state that they have no complete or adequate remedy at law.

Plaintiffs further state that since the filing of this suit, and on the 25th day of June, 1923, Sections 6283 and 6284 R. S. 1919, were amended by the Act of March 21, 1923 (Laws of 1923, pp. 234-236); and that defendant is asserting that said Act of March 21, 1923, is applicable to the reduction order of October 9, 1922 and to this review proceeding. Plaintiffs deny that said Act of March 21, 1923, is applicable to said reduction order or to this proceeding, and state that if said act were to be so construed as to be applicable thereto, it would be a law retrospective in operation, and in violation of Section 15 of Article II of the Constitution of Missouri. And plaintiffs further state that said Act of March 21, 1923, provides that upon a review of a reduction order "the court shall have authority to sustain, set aside or modify the orders and directions under re- [fol. 47] view," and thereby attempts to vest in said court legislative powers which belong exclusively to the legislative department of the state government, thereby violating Article III of the Constitution of Missouri. And plaintiffs state that said Act of March 21, 1923, provides that the Superintendent of the Insurance Department, in determin-

ing the question of rates and profits, "shall take into consideration the acquisition cost and administration expense of such companies, and all earnings of such companies, including investment profits," and thereby deprives plaintiffs of their liberty and property without due process of law, in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States and Section 30 of Article II of the Constitution of Missouri.

Wherefore, plaintiffs pray this Honorable Court to review the defendant's aforesaid findings and order of October 9, 1922, and that said findings and order be cancelled, set aside and for naught held; and plaintiffs pray the court, by its order to be entered forthwith, to fix the conditions and amount of the bond, to be given by plaintiffs in accordance with the terms of the stipulation above set out, to refund to the assured any excess of premiums collected by plaintiffs if said order of October 9, 1922 be finally sustained; and plaintiffs pray such other and further relief as to the court may seen just and proper and for their costs.

(Signed) Hogsett & Boyle, Bates, Hicks & Folonie,
Attorneys for Plaintiffs.

[fol. 48] State of Missouri,
County of Cole, ss:

E. H. Hicks of lawful age being first duly sworn states that he is agent and attorney for the plaintiffs in the above entitled action; that he has read the petition above set out and knows the contents thereof, and that the matters and things therein stated are true as he verily believes and according to his best information and belief.

(Signed) E. H. Hicks.

Subscribed and sworn to before me this 10 day of November, A. D. 1922. (Signed) Martin F. Gepfert, Clerk of Circuit Court of Cole County, Mo., by M. F. Kautsch, Deputy Clerk. (Seal.)

Endorsed on back: Filed Nov. 10, 1922. Martin F. Gepfert, Circuit Clerk.

On December 16th, 1922, defendant Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, filed his answer to such petition, in said court which, caption omitted, is in words and figures as follows, to-wit:

ANSWER—Filed December 16, 1922

Now on this date comes the defendant and for his answer to plaintiffs' petition in the foregoing cause admits that he is the duly appointed, acting and qualified Superintendent of the Insurance Department of the State of Missouri; admits that on the 9th day of October, 1922, he did under and by virtue of the laws of the State of Missouri, after a careful investigation and hearing according to law, order [fol. 49] a reduction in insurance rates charged by the plaintiffs, which said order is correctly set forth in plaintiffs' petition.

Further answering, defendant denies that the aggregate cost of doing business in the State of Missouri for all of the plaintiffs in this case amounts to from 40 to 41% of the aggregate earned premiums of this State of all the plaintiffs each year; denies that from the period of 1917 to 1921 inclusive the cost of doing business in the State of Missouri for said plaintiffs amounted to approximately 42.37% of the aggregate premiums earned by plaintiffs for all the fire, lightning, hail and windstorm insurance written by them during said years; denies that it is necessary or lawful for plaintiffs to accumulate an amount equal at least to 3% of the premium receipts for each year and 10% of the premiums for each year to meet the catastrophe hazard arising from conflagration liability and from hail and windstorm or that said plaintiffs during said period maintained any such funds; denies that from 1917 to 1921 the losses incurred by plaintiffs were approximately 61.49% of the earned premiums for said period; denies that the expenses incurred were approximately 32.37% of the earned premiums for said period; denies that the incurred expenses plus the incurred losses were approximately 103.86% of the earned premiums during said period, and that plaintiffs operated at a loss during said period in the State of Missouri; denies that defendant violated the terms or conditions of any stipulation or any agreement made in this

matter with plaintiffs; denies that the order so made by [fol. 50] defendant is in violation of the terms of any stipulation or agreement with plaintiffs herein or that said order is unreasonable, unjust, illegal or void; denies that said reduction so ordered by defendant is too great to enable said plaintiffs to pay their legitimate losses and necessary operating expenses and to discharge their lawful obligations in the State of Missouri; denies that said reduction will work a hardship upon the plaintiffs so that they will be deprived of their profit without just compensation and without due process of law; denies that said order violates Section XXX Article II of the Constitution of Missouri and Section 1 of the 14th Amendment to the Constitution of the United States; denies that during said period plaintiffs sustained a loss in the State of Missouri of approximately 3.86% of the amount of their premiums during that period.

Further answering, defendant states that an increase in rates was authorized in January, 1920, by the then Superintendent of Insurance of Missouri to the amount of 15% in favor of the plaintiffs and alleges that if said 15% increase had been in effect during the entire five year period mentioned, plaintiffs would have earned in excess of Eight Million Dollars over and above the present earnings shown by said plaintiffs for that period, and alleges that if said 10% reduction ordered by the defendant is not put into effect that plaintiffs will during the next five years earn an enormous amount from the premiums received in Missouri, which amounts will be clearly unreasonable and excessive so as to constitute a tremendous burden upon the citizens of Missouri.

[fol. 51] Further answering, defendant says that this court has no jurisdiction, authority or power to entertain this proceeding because it is an effort on the part of plaintiffs to have the insurance rates of this State fixed by the court; that this court has no power to fix such rates and any attempt to do so will be a usurpation of legislative and executive power and functions and in direct contravention of Article III of the Constitution of Missouri.

Further answering, defendant says that the action of the defendant in approving or disapproving rates and in ordering reduction or increase in rates is a discretionary power given to this defendant by the Legislature and is not sub-

ject to the control of this court and that this court has no authority, jurisdiction or power through and in a new and independent hearing to control the action of this defendant in the matter of a reduction of insurance rates, whereas in this case such reduction was ordered after evidence was submitted to defendant in view of which action was taken.

Further answering, defendant says that the plaintiffs herein have arbitrarily, improperly and unjustly charged certain expenses incurred or paid in other states of the Union or in other parts of the world to the State of Missouri, which expenses should not be borne by said state; that plaintiffs' expenses for doing business in the State of Missouri are unreasonable, arbitrary, unjust and excessive; that plaintiffs have failed entirely to furnish the State of Missouri true and accurate information as to the amount of premiums received in this state, amount of paid losses in this state, amount of operating expenses in this state, amount [fol. 52] of interest received by plaintiffs on unearned premiums in this state, amount of interest received on capital and surplus invested in this state, amount of earnings upon unearned premiums and capital and surplus in this and other states as well as other parts of the world with a proper apportionment of said earnings to this state, amount received from real and personal property in this state, and other states of the Union and other parts of the world with a proper apportionment of said amount to the State of Missouri; and has unjustly and illegally apportioned to Missouri expenses and losses other than those arising from fire, hail, lightning and windstorm and has wrongfully and improperly charged taxes, overhead expenses and other items of expense to the State of Missouri.

Further answering, defendant denies that plaintiffs have operated at a loss in the State of Missouri during the past five years, but alleges that if plaintiffs will truthfully and properly furnish a complete statement of their premiums, unearned premiums, expenses, losses and interest and other income and earnings, that it will develop that plaintiffs during the past five years made a substantial return upon their investment and that such reduction of 10% will not wipe out the profits of plaintiffs in the State of Missouri, but that they will still earn an amount in Missouri which will be more than adequate and necessary to enable plain-

tiffs to pay their legitimate losses and necessary operating expenses and to discharge their lawful obligations in the [fol. 53] State of Missouri and still leave plaintiffs a fair and reasonable profit upon their investment.

Further answering, defendant says that the figures and reports furnished by plaintiffs to the Insurance Department of Missouri as provided by law are incorrect, inaccurate and improper and do not accurately and clearly show the volume of business done by these plaintiffs or the earnings and profits received by them, and that plaintiffs furnished to defendant upon his written request incomplete, incorrect, inaccurate, improper and fragmentary information concerning their business, both in and out of the State of Missouri.

Further answering, defendant says that the plaintiffs herein wrongfully insist upon an improper and inaccurate method of bookkeeping, which system wrongfully and improperly charges the State of Missouri with many items which should not be charged to the state and fails to give to the State of Missouri proper credit for certain earnings, interest and investments of said insurance companies.

Further answering, defendant states that during the past five years the fire stock companies operating in Missouri, the plaintiffs in this suit, have earned a dividend from their capital stock greater by far than the dividends usually earned in the business world and that such dividends earned upon the capital stock by the plaintiffs herein are excessive and unjust and it is convincing proof that plaintiffs herein have earned an enormous dividend upon their [fol. 54] capital invested and particularly that portion of their capital invested in the State of Missouri and that their rates in said state are excessive and unreasonable.

Further answering, defendant says that under and by virtue of the laws of the State of Missouri, it is made the duty of all stock fire insurance companies, including the plaintiffs herein, to file certain reports with the Insurance Department of Missouri and that said plaintiffs have wholly failed and neglected to comply or to make any attempt to comply with the laws of the State of Missouri and have failed and refused to file the information called for by the laws of this state and that by reason thereof plaintiffs are in no position to avail themselves of this

action in court, but are estopped by their own failure to comply with the laws of the State of Missouri.

Further answering, defendant says that the reduction ordered by the Insurance Department of the State of Missouri on October 9th, 1922, is a reasonable and just reduction and that plaintiffs can comply with said reduction and still earn a fair, just and reasonable return from their investment.

Further answering, defendant says that plaintiffs have improperly, unjustly and illegally charged expenses in the State of Missouri based upon discrimination among their insurance agencies in the State of Missouri and upon excessive and discriminatory charges and commissions on the part of agencies in parts of the State of Missouri.

[fol. 55] Further answering, defendant says that in fixing rates in the State of Missouri he is entitled to consider all of the earnings of plaintiff companies and that plaintiff companies cannot legally or lawfully withhold a part of their earnings in establishing the justice or reasonableness of rates in this state and that defendant is not limited to a consideration of underwriting profit as stated by plaintiffs in their petition in arriving at a reasonable rate in the State of Missouri.

Further answering, defendant denies that under the law he is required to consider "good will" in arriving at an insurance rate in the State of Missouri.

Further answering, defendant denies that he is bound to consider unusual and abnormal losses due to the loose and improper conduct of the business done by plaintiffs or that he is bound by abnormal, arbitrary and unreasonable expenses on the part of plaintiffs and alleges that if the losses in this state are abnormally large, as alleged by plaintiffs, they are caused by the careless and improper method of plaintiffs in conducting their business in wholly failing to provide for an inspection and valuation of property insured; and further alleges that plaintiffs have not made any attempt to limit the losses in the State of Missouri and have entirely failed to exercise any judgment with reference to valuations or inspections in this state.

Further answering, defendant alleges that the premiums received in advance by plaintiffs, constitute a trust fund handled by them for the benefit of the persons paying such

premiums, and that it is the duty of the plaintiffs to wisely [fol. 56] and safely invest such funds entrusted to them in legitimate and lawful securities and that in considering the rates to be charged for insurance in Missouri the earnings from such investments should be considered and if such trust funds have not been carefully and safely invested in safe and solvent securities, then plaintiffs are liable to the policy holders of the state for a return of such money improperly and carelessly invested and plaintiffs are not entitled to charge the policy holders of this state for losses occurring from reckless, improvident and careless investments.

Further answering, defendant says that he is vested with a certain discretion in raising and lowering insurance rates and that the order which he made in this case, reducing insurance rates 10% was made after a careful investigation to remain in effect for such a length of time as to enable the plaintiffs herein to keep proper records and accounts of their earnings, expenses and loses which are to be submitted to the defendant from time to time, in order that it may be ascertained whether or not said 10% reduction is reasonable or unreasonable and that, in the judgment of this defendant, such reduction at this time is reasonable and proper, but the order made herein is in the nature of a temporary reduction and to be changed at any time by the defendant upon a proper showing by the plaintiffs herein that their earnings have decreased and are not sufficient to give them a fair return upon their investment.

[fol. 57] Further answering, defendant says that the rates now charged by the plaintiffs herein in the State of Missouri are so exorbitant that many persons are compelled to carry their own insurance and that if the said 10% reduction becomes effective it will cause a greater volume of insurance to be issued by plaintiffs and the citizens of Missouri will carry more insurance, so that in the end plaintiffs will take in a greater revenue and earn more money than if said reduction is not made effective.

Further answering, defendant states that the rates promulgated by the Insurance Department of Missouri, covering losses by fire, lightning, windstorm and hail are intended to and should apply to all persons and all business in the State of Missouri alike, and that plaintiffs have

wrongfully and improperly given bonuses, commissions and reductions to certain classes of business in the State of Missouri, thereby enabling such classes to secure a lower rate for insurance, and at the expense of the other policy holders in the state.

Further answering, defendant denies that the reduction provided in said order will compel plaintiff companies to cease business and leave the State of Missouri.

Further answering, except as to matters heretofore specifically admitted by defendant, defendant denies each and every allegation in plaintiffs' petition contained.

Wherefore, having fully answered, defendant prays to be discharged herein with his costs.

[File endorsement omitted.]

On May 8th, 1923, plaintiffs, Aetna Insurance Company et al., filed their reply in said court, which, caption omitted, is in word and figures as follows, to-wit:

[fol. 58] REPLY—Filed May 8, 1922

Come now the plaintiffs in the above entitled cause and for reply to the defendant's answer:

I

Plaintiffs deny each and every allegation in the answer contained.

II

Further replying, plaintiffs state that if Sections 6283 and 6284, Revised Statutes of Missouri, 1919, be so construed as to deprive this court of the jurisdiction, authority or power to entertain this proceeding, or to review the rate reduction order of the defendant, then said sections, and each of them, would, in such event, be unconstitutional and void and in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, in that they would deprive the plaintiffs, and each of them, of their property and property rights without due process of law, and would deny to them the equal pro-

tection of the laws; and said sections, and each of them would, in such event, be unconstitutional and void and in violation of Section 30 of Article II of the Constitution of the State of Missouri, in that they would deprive the plaintiffs, and each of them, of their property and property rights without due process of law.

Wherefore, having fully replied, plaintiffs pray judgment as in their petition prayed.

[File endorsement omitted.]

On December 16, 1922, the following order of record was made in the case:

[fol. 59] STIPULATION AND ORDER APPOINTING REFEREES—Filed December 16, 1922

"It is hereby stipulated and agreed that this cause shall be referred by the written consent of all parties hereto, to a referee, to hear the evidence and report to the court his findings of fact and conclusions of law; and that the Honorable John I. Williamson, of Kansas City, Missouri, be appointed as referee herein.

Signed and agreed to by the parties, through their respective attorneys of record, and filed in open court this 16th day of December, 1922."

On April 2nd, 1923, the following order of record was made in the case:

"Now, on this 2nd day of April, 1923, come Leslie B. Hutchison and Lewis Horde Cook heretofore appointed referees herein and file their resignation as referees herein, which said resignation is hereby duly accepted by the court.

And now upon motion of the parties in said cause through their attorneys of record in open court it is hereby ordered that the stipulation heretofore filed herein dated December 16, 1922, be and the same is now refiled. And now in accordance with said stipulation and upon motion of both parties to this cause, it is by the court ordered that the Honorable John I. Williamson of Kansas City, Missouri, be and he is hereby appointed referee herein with

all the powers of a referee, and that this cause be and it is hereby referred to him as referee, and he is hereby authorized and empowered to hear the testimony in said cause, wheresoever taken by the parties, whether within or without this state, and to report to this court his find-
[fol. 60] ings of fact and conclusions of law.

H. J. Westhues."

On December 22, 1924, the referee filed in court his report and the transcript of the testimony and all exhibits offered in the case.

On December 22, 1924, and during the November term of said court, the court entered judgment as follows:

JUDGMENT—Entered December 22, 1924

"Now on this 22nd day of December, 1924, being one of the days of the November Term, 1924, of this court, come the parties plaintiffs and defendant by their attorneys of record, and the defendant in person. And now comes the Honorable John I. Williamson, referee in this cause, and now files his report herein, together with a transcript of all proceedings had and evidence offered before him, and all exhibits and briefs of counsel filed before him in this cause. And now said referee files herein his supplemental report showing the time spent, services rendered and expenses incurred by him as referee herein; and files also his motion asking for an order of this court making an allowance to the referee for his said services and expenses.

And now the court, having heard the evidence offered upon said motion and the arguments of counsel for both parties thereon, doth now sustain said motion and doth now order that said John I. Williamson, referee herein, be and he is now allowed the sum of $20,000 as his fee and as com-
[fol. 61] pensation to him in full for all services rendered by him in this cause (this amount being inclusive of all sums heretofore allowed or advanced to the referee, as hereinafter mentioned), and that he be allowed the further sum of $627.24 as expenses, which the court finds said referee has reasonably and necessarily incurred herein; and that both of said amounts be taxed as costs herein, to which

order the defendant excepts. And the court finds that the parties have heretofore voluntarily paid to the referee the sum of $2,000 (of which $1,000 was paid by plaintiffs and a like amount by defendant), and that the parties have heretofore under order of court paid to the referee the further sum of $3,000 (of which $1,500 was paid by plaintiffs and a like amount by defendant), making an aggregate of $5,000 advanced and paid by the parties to the referee on account of his services and expenses, and leaving a balance of $15,627.24 now due the referee for services and expenses herein. And the court doth further order and adjudge that one-half of said balance of $15,627.24 shall be forthwith advanced and paid to said referee by the plaintiffs, and that one-half thereof shall be forthwith advanced and paid to said referee by the defendant, and that the parties or party ultimately prevailing herein shall recover the amount so paid from the party or parties ultimately losing herein, to which order defendant excepts.

And now comes defendant and files herein his motion to quash the foregoing order fixing the amount of the referee's fee and ordering it paid as aforesaid, which motion is now by the court overruled, to which ruling defendant excepts. [fol. 62] And now the court doth order that the fees and expenses of R. L. Blume, stenographer, for reporting and transcribing the testimony and proceedings before the referee, in the sum of $3,725.96 be allowed to said R. L. Blume, and that the same be taxed as costs herein; and the court finds that of this sum the plaintiffs have advanced and paid to said Blume one-half, or $1,862.98, and the defendant has advanced and paid to said Blume $391.28 on account, leaving balance due said Blume from defendant of $1,471.70. And the court doth order and adjudge that the parties or party ultimately prevailing herein shall recover the amounts so paid from the party or parties ultimately losing herein.

And now the defendant is by the court given leave to file his term bill of exceptions herein at any time during this November Term, 1924.

And now plaintiffs ask leave of court to amend their petition by interlineati[illegible], to which defendant objects; and said objection is by the court overruled and leave is granted

as asked, to which order defendant excepts; and plaintiffs amend their petition accordingly.

And now plaintiffs file exceptions to portions of Section XI of the referee's report, and defendant files exceptions to the referee's report herein. And the court being fully advised in the premises doth overrule plaintiffs' said exceptions, to which ruling plaintiffs except; and the court being fully advised doth overrule defendant's said exceptions, to which ruling defendant excepts.

[fol. 63] And now this cause comes on for final hearing before the court upon the pleadings, the evidence and the referee's report herein; and the court having fully considered the same and having heard the arguments of counsel, and being fully advised in the premises, doth order and adjudge that the referee's report herein be, and the same is now, in all things sustained and confirmed; and the court now finds the issues herein in favor of the plaintiffs and against the defendant, and the court finds that plaintiffs are entitled to the relief prayed for in their petition and recommended by the referee in his said report; and the court finds that the rate reduction order, in issue herein, made and promulgated by the defendant Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, on October 9, 1922, is unreasonable, unjust, confiscatory and void, and should be cancelled, set aside and for naught held. Defendant excepts.

Wherefore, it is by the court considered, ordered, adjudged and decreed that the aforesaid rate reduction order, and each and every finding, order and direction therein, made and promulgated by the defendant Ben C. Hyde, Superintendent of the Insurance Department of the State of Missouri, under date of October 9, 1922, (wherein said defendant ordered a reduction of 10 per cent in the rates charged by the stock fire, lightning, hail and windstorm insurance companies doing business in Missouri on fire, lightning, hail and windstorm insurance business written in the State of Missouri) be and the same is now cancelled, [fol. 64] set aside and for naught held; and that all of the costs of this cause be and the same are now taxed against the defendant; and that the plaintiffs have and recover of and from the defendant their costs herein laid out and expended, for all of which let execution issue. Defendant excepts."

Thereafter and within four day- to-wit and during the same term of court on December 22, 1924, defendant filed his motion for new trial and his motion in arrest of judgment, complete copies of which are set out in the bill of exceptions and are by reference hereby incorporated into and made a part of this record.

Thereafter and on the 22nd day of December, 1924, and during the same term of court, defendant's said motion for new trial was by the court overruled, to which action of the court the defendant at the time duly excepted and still excepts, and thereafter and on the same day, December 22nd, 1924, and during the same term of court, defendant's motion in arrest of judgment was by the court overruled, defendant at the time duly excepting.

The order overruling said motion for new trial and in arrest of judgment is as follows:

"And now defendant files his motion for new trial herein, which motion the court being fully advised doth now overrule, to which ruling defendant excepts.

And now defendant files his motion in arrest of judgment herein, which motion the court being fully advised doth now overrule, to which ruling defendant excepts."

Thereafter and on the 22nd day of December, 1924, and during the same term of court, defendant filed his appli- [fol. 65] cation and affidavit for an appeal to the Supreme Court of Missouri, which (caption omitted) is in words and figures as follows:

"State of Missouri,
County of Cole, ss:

Ben C. Hyde, of lawful age, being first duly sworn, makes oath and says that the appeal prayed for in the above entitled cause is not made for vexation or delay but because the affiant believes that the appellant is aggrieved by the judgment and decision of the court.

Ben C. Hyde, Superintendent.

Subscribed and sworn to before me this 22nd day of December, 1924. Richard R. Nacy, Clerk Circuit Court, Cole County, Missouri."

Which application of defendant for an appeal was by the court on the same day sustained and defendant was allowed an appeal to the Supreme Court of Missouri, the order allowing such appeal being as follows:

"And now defendant filed his application and affidavit for an appeal, which application is by the court granted and the defendant is by the court allowed an appeal herein to the Supreme Court of Missouri as prayed."

Thereafter, and on the 6th day of February, 1925, and within the time previously allowed, defendant presented his bill of exceptions to the court, which was signed as the true bill of exceptions by Honorable Henry J. Westhues, [fol. 66] Judge of the Circuit Court of Cole County, Missouri, which bill of exceptions so signed was thereupon filed, ordered made, and made a part of the record in the cause. On the back of said bill of exceptions is the endorsement "Filed February 6th, 1925. Richard R. Nacy, Clerk."

The order allowing said bill of exceptions and ordering it filed and made a part of the record is as follows:

"And the defendant is by the court given leave to file bill of exceptions herein at any time until on or before February 28th, 1925."

Said bill of exceptions, caption omitted, contains the motion for new trial, motion in arrest of judgment, orders appointing referee, referee's finding, exceptions filed, and all orders and records pertaining to the case, are by reference hereby incorporated, and made a part of this record, said bill of exceptions is as follows:

[fol. 67] **Bill of Exceptions**

Be it remembered that on this day, to-wit, December 16, 1922, being one of the days of the November 1922 term of this court, the above entitled cause coming on for hearing before the Hon. Henry J. Westhues, judge thereof, it appearing to the court that the parties heretofore filed in this court a stipulation asking for the appointment of Hon. John I. Williamson as referee, said stipulation being in words and figures as follows:

In the Circuit Court of Cole County, Missouri, November Term, 1922, December 16, 1922

No. 4566

Aetna Insurance Company et al., Plaintiffs,

v.

Ben C. Hyde, Superintendent of Insurance, Defendant

Stipulation—Filed December 16, 1922

It is hereby stipulated and agreed that this cause shall be referred by the written consent of all parties hereto, to a referee, to hear the evidence and report to the court his findings of fact and conclusions of law; and that the Honorable John I. Williamson, of Kansas City, Missouri, be appointed as referee herein.

[fol. 68] Signed and agreed to by the parties, through their respective attorneys of record, and filed in open court this 16th day of December, 1922.

Bates, Hicks & Folonie, Cockrill & Armistead, Leahy, Saunders & Walther, Hogsett & Boyle, Attorneys for Plaintiffs. Floyd E. Jacobs, John T. Barker, Attorneys for Defendant.

[File endorsement omitted.]

[fol. 69] Thereupon, said referee took his oath of office, qualified and entered upon the discharge of his duties.

The parties agreeing to the taking of testimony in this cause, plaintiffs, to sustain the issues on their part, offered the following evidence, oral and documentary, to-wit:

Be it remembered, that the following proceedings were had before the Hon. John I. Williamson, the duly appointed, qualified and acting referee in the above entitled cause, on the 4th day of June, 1923, and on the subsequent dates hereinafter mentioned, at the Auditorium Room of the Insurance Exchange Building, Twenty-first floor, Chicago, Cook

County, Illinois, and at the other places hereinafter mention.

APPEARANCES

For plaintiffs: Mr. R. J. Folonie, Mr. E. H. Hicks, Mr. Walter H. Saunders, Mr. Ashley Cockrill, and Mr. William S. Hogsett.

For the defendant: The Defendant Insurance Commissioner in person as well as by counsel, Mr. John T. Barker, and Mr. Floyd Jacobs.

[fol. 70] PLAINTIFFS' EVIDENCE

O. G. TOLES, of lawful age, being produced, sworn and examined as a witness on behalf of the plaintiffs, testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name?

A. O. G. Toles.

Q. Mr. Toles, by what company are you employed?

A. The Royal Insurance Company, Ltd.

Q. And what is the nature and character of your employment with that company?

A. Auditor and chief accountant.

Q. In connection with your duties with your employer, do you have general supervision of the records and the books of accounts of your company as they are kept in your office at Chicago, Illinois?

A. Yes, sir.

Q. And what is the designation or style of the general office of your company?

A. The Western Department of the Royal Insurance Company, Ltd.

Q. And what territory or portion of the United States does that Western Department comprise?

A. Fourteen states.

Q. Is Missouri one of those fourteen states?

A. Yes, sir.

Q. Where is the head office of your company for the United States?

A. New York City.

Q. In general, does your company do business throughout the various states of the Union?

A. Yes, sir.

[fol. 71] Q. Who is the manager of the Western Department of your company?

A. Elvin W. Law.

Q. And prior to his succession as manager, his father, Mr. George Law, was the manager of this Department, was he not?

A. Yes, sir.

Q. When did you commence working for the Royal Insurance Company?

A. May 9th, 1910.

Q. In the same capacity as at present?

A. Yes, sir.

Q. How long have you been in the business of insurance accountancy?

A. Practically all my life.

Q. Well, when did you commence? What year?

A. In Chicago, in 1900.

Q. And have been engaged in that same kind of general business since that time?

A. Yes, sir.

Q. In connection with your business for your present employer, the Royal Insurance Company, what general character of information or bookkeeping did you have supervision of?

A. The premiums, losses, expenses, in connection with the business.

Q. Now, in the conduct of the business of the Royal Company during the period from 1917 to 1921, in a general way, how did they acquire their business? Through what agencies or means?

A. Through agencies appointed in the various towns in those fourteen states.

Q. And those agents, in general, were upon a varying commission basis, were they?

A. Yes, sir.

Q. In the event that an agent in the regular course of [fol. 72] such business would undertake business for your company, how would the knowledge of that fact come to you?

A. In the form of a daily report from the agent covering the risk.

Q. I am asking now to outline your general course of business just for a general understanding and not directing it to any particularization at the present time. What is the daily report?

A. It is a synopsis of the policy written by the agent, giving the amount, the rate, the premium, expiration, and the quality of the risk covered.

Q. Within what period in general after the actual undertaking of the risk by the agent would such report come to your office in the regular course of business?

A. They are presumed to be mailed every day they are written.

The Referee: Q. Does your report include the name of the assured?

A. Yes, sir.

The Referee: Q. And his postoffice address?

A. Not necessarily; the town.

Mr. Folonie:

Q. Now, this daily report, when it came to you—when I say "to you" I mean you and those under your charge—what character of information or record would you make on your books and records when a daily report came in?

A. The daily reports are registered in books of registry in the office, giving the amount of the policy, the premium, the name of the assured, the expiration and classification of the risk.

Q. What do you mean by the term "classification of the risk?"

A. The kind of property that is covered.

[fol. 73] Q. Did you in that term "classification" have reference to what we sometimes call underwriting by classes? Is it classification in that sense that you were using the term?

A. Yes.

Q. What general character of business did the Royal Insurance Company insure during the period mentioned? Against what hazards, in general?

A. Fire, tornado, automobile business of various kinds. I might add to that it covered riot and civil commotion in the last few years.

The Referee:

Q. Not hail?
A. No, sir.

Mr. Folonie:

Q. Now, in the conduct of the business what general classes of employes were there in the Western Department? You have already mentioned agents. Will you mention other classes of employes who would come in contact with the more or less direct activity of writing the business and the supervision of the business in the various agencies?

A. There are our state agents and field men.

Q. And they perform what general function?

A. They have supervision over a certain territory, possibly one state; sometimes a state and a part of another state.

Q. Did your company during the period in question have any department which had particular relation to losses?

A. Yes, sir.

Q. What do you call that department of your company?

A. Loss Department.

Q. Did you have employes, salaried employes of your company, caring for that activity of your company?

A. That department work, yes, sir.

[fol. 74] Q. And did your company in the regular course of its business during that period also employ adjusters from time to time other than those who were on salary with your company?

A. Yes, sir.

Q. Now, did your company sometimes—did your company keep records during the period mentioned, respecting the expenses such as agents' commissions and the expenses of employes and supervisory employes such as you have mentioned, and the losses and the amounts thereof?

A. Yes, sir.

Q. And are those books here in Chicago, in the offices of your company?

A. Yes, sir.

Q. And ready to be produced on request?

A. Yes, sir.

Q. Now, to direct your attention to the general nature of your method of keeping books respecting losses, in the

event that a fire occurred on a particular date, how would you ordinarily and in regular course receive knowledge at your office of the fact that there had been a fire?

A. In the form of a report from the agent as to the fire.

Q. By that you mean the agent situated locally at the place where the policy was written or the fire occurred?

A. Yes, sir.

Q. And in connection with those reports, in ordinary course, did the agent make any estimate or report to you of the extent of the loss as his judgment indicated it to be?

A. It is the custom to give an estimate of the loss.

[fol. 75] Q. Now, would you make any entry in your books at the time of the occurrence of a loss when reported to you, setting up any figure on your books respecting such loss or the amount thereof?

A. Yes, sir.

Q. And in what kind of a record did you put that, and what do you call the item as you keep your record?

A. We call it our "new loss record."

Q. And up to what point or how long would you on your books carry the amount of the loss at the amount so initially reported to you by the agent?

A. Up to the time of its payment or adjustment.

Q. Now, if upon an adjustment, a figure different than that in the original estimate were obtained by reason of the adjustment and the loss for some reason were not paid immediately after its adjustment, would you make a correction of that figure at the time of its adjustment or wait until it is paid?

A. Wait until it is paid.

Q. Did you keep your records in such from that you would be able to state the expenses incurred for your company and remaining unpaid at the expiration of any given year?

A. Yes, sir.

Q. And also have a record showing the expenses paid during such particular year?

A. Yes, sir.

Q. Did you keep—we have been discussing so far your direct insurance activities—did your company during the period in question accept or cede any re-insurance?

A. Yes, sir.

Q. Directing attention to Missouri now, during the period in question?

A. Yes, sir.

Q. What is the method of conducting such reinsurance—[fol. 76] I mean, how is it done, in a general way?

A. Well, I would say that where a company accepts a policy or a risk for a larger amount than they wish to carry themselves, they cede a certain portion of that to another company, that might not be interested in this.

Q. And your company both accepted and ceded reinsurance during that period on Missouri business, did you?

A. Yes, sir.

Q. Did you keep records of the amounts so accepted and ceded?

A. Yes, sir.

Q. Just in a general way, how would that business be conducted as to whether, when you got a particular risk, would the re-insurance be effected after notice came to you of a particular re-insurance, or were there contracts covering a series of operations and insurances or was it done both ways?

A. Both ways.

Q. Now, directing your attention to premiums in the State of Missouri, I will ask you whether you have the figures of your company for the year 1917 as conducted in the State of Missouri?

A. Yes, sir.

Q. How, as a matter of practical mechanics, did your company make a separation of the amount of insurance or the amount of premiums on different classes? For example, fire and lightning as distinguished from tornado and windstorm insurance. How would you go at it to make the separation physically? How did you do it?

A. We have what is called the Hollworth card system in the office, and when a daily report is received from an agent, after registration, the cards are punched from those daily [fol. 77] reports, upon which nearly all the information carried on the daily report is transferred to the card.

Q. Now, when you say the card is punched, what do you mean by that?

A. Certain characteristics on the card by which they can carry the amounts of the policies, the numbers of the

daily reports, the expiration, the term, classification, and information of that character.

Q. When you mention punching, how is that done? By some machinery or by hand?

A. Done by hand and a machine similar to a typewriter.

Q. And that punches a hole in the card, does it?

A. Yes, sir.

Q. And whichever class this comes into, as fire and lightning on one side, and tornado on the other, your hole would be punched on a different place on the card?

A. We carry that further by using a different colored card for the different types of insurance.

Q. But you use this punching system additionally?

A. Yes, sir.

Q. And then the card, if you had to find what part of it belongs in one class or another, you had the holes punched in different places, and if you wished to sort a group of such cards, you can sort them by machinery also?

A. Yes, sir.

Q. So that you can separate one class from another by reason of these punch marks, which would then be put through a machine and separated according to different punches?

A. Yes, sir.

[fol. 78] The Referee:

Q. Do I understand, Mr. Witness, that you have both the punching system and the colored card, each of which indicates the same class of insurance?

A. No, the colored cards—I don't know whether they are loss cards or premium cards—are used to indicate the various branches of the business.

The Referee: Repeat your answer so the stenographer can get it.

A. The colors on the cards are used more to designate the different operations, such as the written business and the re-insurance business, loss cards and work of that character, not so much as to distinguish between different classes of business. The cards are the same for all uses, so far as the printing of them is concerned.

Mr. Folonie:

Q. Now, in the year 1917, what was the amount of the gross premium direct of your company upon the hazards of fire and lightning?

Mr. Jacobs: One minute. Defendant objects to the introduction of this testimony on the ground it isn't the best evidence; that the books are the best evidence of this testimony.

Mr. Folonie: I will temporarily withdraw the question and interrogate the witness further respecting the books.

Q. You may state, Mr. Toles, respecting the books of your company, the size and number and bulk of the books which relate to the question of premiums, expenses and losses for the State of Missouri for the period of five years we have here in mind, namely 1917 to 1921, inclusive.

[fol. 79] A. Well, they are very large and very voluminous.

Q. Well, just elaborate there on it a little bit. That is a little bit of a conclusion. Suppose you tell us about how many, in number, there are?

A. I would say fifty or sixty.

Q. And what is the bulk of those various books?

A. Well, the State of Missouri information is contained in the same books that the information for the entire fourteen states is carried in. So that it would be difficult for me to answer that question in that way.

The Referee:

Q. How large are the books?

A. I would say six or eight inches thick and possibly twenty-four by eighteen.

Mr. Folonie:

Q. And these cards, how many of those cards have you covering the period in question?

A. Well, we use a million or so a year.

Mr. Jacobs:

Q. For the State of Missouri?

A. No, sir.

Mr. Folonie:

Q. That is, for your department you mentioned, covering the fourteen states in question?

A. Yes, sir.

Q. And are those cards as they exist in your office kept separate as to states?

A. No, sir.

Q. Now, have you those books—what about the daily report you mentioned? Have you those also on file in your office?

A. The daily reports are not kept after they expire.

Q. And so you would have only part of those for the period in question?

A. Yes.

[fol. 80] Q. Now, gross premiums in the State of Missouri and the returned premiums and the assumed and ceded re-insurance, are all those various figures on your books in tabulated and calculated form to finals or are they subject to being calculated by you from this mass of figures you have mentioned?

A. I would say they are there so they can be calculated from.

Q. Now, have you made such calculations from these books and records at the instance and request of counsel here setting forth the details of the premiums both direct and re-insurance premiums, the expenses according to the different groups or departments of your company, and its various activities, and the losses paid and unpaid during the various years, 1917 to 1921, inclusive?

A. Yes, sir.

Q. How long did it take you to make the calculations from your books and records to arrive at these figures?

A. Several days.

Q. Are the books and records here in your office in Chicago subject to examination by the parties?

A. Yes, sir.

Q. And if any part of these records is desired to be examined, are they available and open to the parties to make such examination as they see fit?

A. Yes, sir.

Q. I will now repeat my question which I withdrew a short time ago, namely, what were the gross premiums direct of

the Royal Insurance Company in the State of Missouri upon the hazards of fire and lightning as shown by the books and records of your company for the year 1917?

[fol. 81] Mr. Jacobs: One minute. The defendant makes the same objection to that question as made to the preceding one, and asks the commissioner to permit me to examine the witness a little further on his qualifications.

Mr. Folonie: No objection to that.

The Referee: You may examine.

Mr. Jacobs: Q. The daily reports, Mr. Toles, that you referred to a little while ago, are those all the reports of agents?

A. Yes, sir.

Mr. Jacobs: Q. And you say that part of them are in the possession of the company now and part of them has been destroyed?

A. Yes.

Mr. Jacobs: Q. Is that for the period of 1917?

A. 1917 to '21.

Mr. Jacobs: Q. Entirely. You were asked specifically about '17, that is the reason I am asking you. For the year 1917 are all the reports destroyed?

A. Yes, sir.

Mr. Jacobs: Q. So you have no agents' reports for that year?

A. No, sir.

Mr. Jacobs: Q. And these original reports as they came into your office, under the system of bookkeeping whereby all business of the eighteen states were combined under one system of bookkeeping?

A. Yes, sir.

The Referee:

Q. Is that fourteen or eighteen?

The Witness: Fourteen.

Mr. Jacobs: Fourteen states.

Q. And there was no separation at any time in which the tabulation that you now have in your possession was made [fol. 82] in the business for Missouri?

A. Yes.

Mr. Jacobs: Q. When did you make separation for the Missouri business?

A. Daily, monthly and yearly.

Mr. Jacobs: Q. You mean, when the agents' reports come in, there is an immediate separation of the Missouri business?

A. Yes, sir.

Mr. Jacobs: Q. Under what system?

A. Registry.

Mr. Jacobs: Q. That is, these cards you referred to?

A. Both the written registry and the cards.

Mr. Jacobs: Q. Now, you say that for the period of five years you have something like two million cards for these fourteen states?

A. We have more than that for the five years.

Mr. Jacobs. Q. The two million you referred to were for only one year?

A. One million, I said.

Mr. Jacobs: Q. Perhaps five or six million cards?

A. More than that.

Mr. Jacobs: Q. Have they all been preserved?

A. No, sir.

Mr. Jacobs: Q. Have you any for 1917?

A. No, sir.

Mr. Jacobs: Q. So that as far as your card system is concerned, there is no record of the business with reference to Missouri or the district at large?

A. No record by the individual cards.

Mr. Jacobs: Q. Now, with reference to your register, you kept a record, you say, through a register as well as your card index or card system?

A. Yes.

[fol. 83] Mr. Jacobs: Q. Now, have you the registers for the year 1917?

A. Yes, sir.

Mr. Jacobs: Q. Are they preserved in books?

A. Yes, sir.

Mr. Jacobs: Q. Are they duplicates of the cards?

A. Yes, sir.

Mr. Jacobs: Q. Or do they cover different matters from the cards?

A. They don't carry as much information as the cards.

Mr. Jacobs: Q. The cards referred to your different operations, didn't they?

A. Yes.

Mr. Jacobs: Q. And your registry referred to other matters connected in the insurance business—in other words, did they coincide or were the cards along one line and the register along another?

A. Both along the same line to a certain extent; cards and registers were both made from the daily reports.

Mr. Jacobs: Q. The registry did not contain as much as the cards?

A. No.

Mr. Jacobs: Q. Now, then, part of your record is on, as far as the part contained in the cards is concerned, and that did not appear in the registers?

A. Yes, sir.

Mr. Jacobs: Q. Now, Mr. Toles, you had no way, then, of ascertaining this matter and making the tabulation except on the basis of your register?

A. Well, you understand that this matter in regard to different states is——

Mr. Jacobs: Q. (Interrupting.) How is that?

A. This business in each state is carried together each year and carried as a state proposition.

[fol. 84] Mr. Jacobs: Q. I don't believe I understand you. I can't hear you.

A. You understand each year we have the various information carried on these cards and the registers covered and go to make a total for each state, so we have all this information in books of record.

Mr. Jacobs: Q. You have another book in which at the end of the year you collect information from the registers and the cards?

A. Each month.

Mr. Jacobs: Q. Each month?

A. Yes.

Mr. Jacobs: Q. What is the name of that book?

A. We call it an analysis book.

Mr. Jacobs: Q. Have you preserved that for the last five years, from '17 to '21, both inclusive?

A. Yes, sir.

Mr. Jacobs: Q. Now what does it contain?

A. Amounts written and premiums, the details of the re-insurance and the net premiums.

Mr. Jacobs: Q. And the losses?

A. Not in that book.

Mr. Jacobs: Q. The expenses?

A. No, sir.

Mr. Jacobs: Q. Now, your book, does it separate the business entirely for Missouri?

A. Yes, sir.

Mr. Jacobs: Q. By the actual facts as they appeared upon the registry and the cards?

A. Yes.

Mr. Jacobs: Q. Not by estimate?

A. No, sir.

Mr. Jacobs: Q. That is, with reference to premiums?

A. With reference to premiums.

Mr. Jacobs: Q. Is that true of the other branches of the operation?

A. True of the losses.

[fol. 85] Mr. Jacobs: Q. Of the losses?

A. Yes.

Mr. Jacobs: Q. But not of the expenses?

A. No, sir.

Mr. Jacobs: Q. What are they, allocated—estimated and allocated?

A. Actual expenses of Missouri are carried on our books, but not that one; not on that particular record.

Mr. Folonie: May I suggest, if the court please, that I am directing attention at this phase of the questioning to the question of premiums and not expenses and losses, except to say in a general way how they were kept? Counsel might well interrogate on that at a later point, after I have made a predicate for it.

Mr. Jacobs: Very well.

Q. Now, you made up this tabulation yourself?

A. Yes, sir.

Mr. Jacobs: Q. Personally?

A. Yes, sir.

Mr. Jacobs: Q. And you got it from what source?

A. From analysis books and from my information in regard to the annual statement that I had already filed with the department.

Mr. Jacobs: Q. Did you prepare the annual statement yourself for the department?

A. Yes.

Mr. Jacobs: Q. I suppose you mean by that the department of insurance for Missouri?

A. Yes.

Mr. Jacobs: Q. Did you prepare those statements?

A. Yes, sir.

Mr. Jacobs: Q. Did you personally make this tabulation from the analysis book?

A. I and my assistant together.

[fol. 86] Mr. Jacobs: Q. Done under your supervision?

A. Yes, sir; done under my supervision.

Mr. Jacobs: Q. The figures which you gave on this tabulation with reference to the gross premiums collected in the State of Missouri for 1917, I think that was the question asked you—are those figures based upon accurate information and records in you office, or are they based upon estimates?

A. Upon actual information.

[fol. 87] Q. What figures are those you have given—I am not asking for amounts now, but as to the kind of parts of these figures—did you report to Missouri upon your tax schedules or statements?

A. Well, practically the same figures.

Q. In other words, the tax statements filed with the State of Missouri contained virtually the same figures that you have mentioned as to the annual business?

A. Yes, sir.

Q. And those were sent in a sworn form for the purposes of levying and assessing taxes on your company in the State of Missouri?

A. Yes, sir.

Q. Directing your attention to question of losses in the State of Missouri during the five years in question, where do you get your information respecting paid losses—I mean from what source in your company does your information come to your department?

A. From the loss department.

Q. And when your loss department, as you have a draft or a check in payment of a loss sustained by the hazards insured against, in what form do they give you the infor-

mation as to the amount so paid, or for which the draft or check is given?

A. Well, that comes to us through the paid-loss sheets.

Q. And what about the checks and the drafts issued for them? Are they issued out of your department or out of the loss department?

A. Issued out of the loss department.

Q. And they deliver to you what they call loss sheets, and from those you make the entries in your books and records, do you?

[fol. 88] A. The loss sheets are delivered to the tabulating room and the cards are punched from the paid-loss sheets.

Q. What do you take off on the cards?

A. The amounts from the paid-loss sheets.

Q. Are those separated by states so you can separate the Missouri losses from losses in the State of Illinois, for instance?

A. Yes, sir.

Q. And is that separation done by this method of punching you mentioned?

A. Yes, sir.

Q. Then do you on your books and records carry them separately so that your loss records show the different states separately?

A. Yes, sir.

Q. You don't have to use any apportioning method to get at your losses in the different states?

A. No, sir.

Q. For the year 1917, have you made a computation from your books and records as to the net losses paid that were upon the various classes of business you were writing?

A. Yes, sir.

Q. And how did you arrive at net losses paid? I mean, by what method of calculation did you arrive at a net figure?

A. By taking net losses and deducting from that the gross, and the re-insurance authorized in the State of Missouri.

Q. And the remaining figure, then, was the net amount which your company was out of pocket by paid losses?

A. Yes, sir.

Q. That is, you take the whole amount of that loss, we will say, for example, $5,000 was the amount paid and if there was salvage of, say, $1,000, what would you do with that salvage?

[fol. 89] A. That is deducted from the original loss.

Q. That would leave how much in that instance?

A. $4,000.

Q. Then if you had re-insurance of $1,000 on this particular matter, that would leave your net loss, then, how much?

A. If you had $1,000 insurance on this $5,000 policy?

Q. Yes.

A. You would deduct one-fifth of the loss for the insurance. One-fifth of the net loss after salvage deducted.

Q. I am directing attention now to the net losses paid. I am not at this point asking you anything about incurred losses. What was the amount of the net losses paid as shown by your books and records for the year 1917 computed as you have stated you made the computation, upon the hazard of fire and lightning?

Mr. Jacobs: One minute. The defendant objects to that question because the answer and the testimony sought to be elicited from this witness is not the best evidence, because this witness has not been so qualified, and the facts established would make the testimony of other officers competent and the best proof and the best evidence in this case.

The Referee: I think the witness has not been qualified in respect to this matter, Mr. Folonie.

Mr. Folonie: Perhaps that is true.

Q. The keeping of these books and records respecting losses, were the entries in those books made by you or under your direction in the regular course of business?

A. The paid losses?

[fol. 90] Q. Yes.

A. No, sir; they are made in the loss department as the losses are paid through our department.

Q. What do you mean by the losses paid through your department?

A. The losses that are issued are presented to the cashier of our department and paid there.

Q. Then the matter of actual payment is made out of your department and under your general supervision, is it?

A. Yes, sir.

Q. Are the entries made of the amount of such losses on the books and records of your office?

A. Yes, sir.

Q. And are those records truly and correctly made and entered at the time?

A. Yes, sir.

Q. Now, with respect to these records of loss, are those cards that you have mentioned on which this tabulation is made, are they preserved?

A. For a certain length of time, yes, sir.

Q. And what is the usual period of time you preserve those?

A. About two years after the year closed.

Q. For the year 1917 I assume, then, those cards are not existing?

A. No, sir.

Q. What books and records do you have respecting losses from which these loss records are taken?

A. They have the record of the new losses; that is, the record of losses as they are reported; and they have a record of the losses as they are paid individually.

Q. And do you have any such books which are equivalent to a cash book as it is known in mercantile organizations?

A. The same connection to commissions as the registers have as to losses.

[fol. 91] Q. And how many books of accounts do you have, which you would have to search and examine, to arrive at the question of losses?

A. Well, you would have to have your loss records, both your new losses and paid losses. You would have to have all your loss reports if you wanted to check that very closely.

Q. Are those preserved?

A. Yes, sir.

Q. Now, your records other than the loss reports, your books, how many in number are there, as near as you can state, with respect to the question of losses?

A. Well, I don't know—you refer to the records kept in the loss department or the records we have of the——

Q. Well, take the records that you have for the 5-year period here in question. How many books does it take to contain the loss records for that period?

A. The books that contain the loss records of Missouri also contain the loss records of all other states. We don't have a separate book for each particular state. It is carried into various books in our department in various ways.

Q. And some sort of an idea of about how many books are involved in this loss feature?

A. Well, to be purely an estimate, I would say twenty-five or thirty.

Q. And how large or bulky or voluminous are those books?

A. Well, I don't know that I can answer that. They are regular loss record books.

Q. Well, are they little memorandum books that you put in your pocket?

A. No, sir. They are about the same size as the other books I spoke of first in regard to the premium record.

[fol. 92] Q. Now, do these books and records that you mention besides containing the records of the State of Missouri contain also the record for the other thirteen states in your western territory district?

A. Yes, sir.

Q. That is, there are separate entries pertaining to separate states, but they are all contained in the same books?

A. Yes, sir.

Mr. Jacobs: One minute. May I ask this witness some qualifying questions?

The Referee: Surely.

Mr. Jacobs: Q. Do you say that the loss department sends a paid-loss sheet into your department?

A. They send the paid-loss sheets to what we call a tabulating room which is a part of our department.

Mr. Jacobs: Q. Now, that paid-loss sheet is issued after the payment?

A. Yes, sir.

Mr. Jacobs: Q. And the loss is paid from the loss department, isn't it?

A. The drafts are issued in the loss department.

Mr. Jacobs: Q. The drafts are issued in the loss department and they thereafter issue a paid-loss sheet?

A. Yes, sir.

Mr. Jacobs: Q. And the paid-loss sheet is sent to what you call the tabulating department?

A. Yes, sir.

Mr. Jacobs: Q. Now, the loss department, strictly speaking, is a separate department from your own, isn't it?

A. Yes, sir.

Mr. Jacobs: Q. And the tabulating department is a separate department from your own?

A. That is under my jurisdiction.

[fol. 93] Mr. Jacobs: Q. And when this paid-loss sheet is sent following the payment of the check by the loss department into the tabulating department, the cards are punched there?

A. Yes, sir.

Mr. Jacobs: Q. Now, is that merely attached to your department, this department called the tabulating department? I mean by that, is it under your direct supervision or is it merely regarded as a part of your general department?

A. It is under my direction.

Mr. Jacobs: Q. Under your immediate direction?

A. Yes, sir.

Mr. Jacobs: Q. Now, when these cards are punched, are they preserved?

A. For a certain length of time.

Mr. Jacobs: Q. Have you then now for the five years from 1917 to 1921 inclusive?

A. No, sir.

Mr. Jacobs: Q. So that record is no longer in existence?

A. No, sir.

Mr. Jacobs: Q. And the only records you now have—or, by the way, are the paid-loss sheets in existence?

A. Yes, sir.

Mr. Jacobs: Q. The original paid-loss sheets?

A. Yes, sir.

Mr. Jacobs: Q. Which were sent from the loss department to the tabulating department?

A. Yes, sir.

Mr. Jacobs: Q. Are they in book form?

A. Yes, sir.

Mr. Jacobs: Q. And are preserved now, you say, for that 5-year period?

A. Yes, sir.

[fol. 94] Mr. Jacobs: Q. Did you take your records from those paid-loss sheets which you have with you now?

A. No, sir.

Mr. Jacobs: Q. So, so far as those sheets are concerned, you have nothing to do with them with respect to this report you now have before you?

A. The figures I have here came from those paid-losses, but I didn't take them direct from there at this time.

Mr. Jacobs: Q. And you didn't take them from the cards which were the second step after the paid-loss sheets, because the cards were destroyed?

A. No, sir.

Mr. Jacobs: Q. You took them, I understand, from some books called books of losses, and a book of paid losses that you have in your possession?

A. I took it from records that are made from those two books.

Mr. Jacobs: Q. Then, after those books are made up, there are other records made up from them?

A. Yes, sir.

Mr. Jacobs: Q. And what are they called?

A. I would call them a loss record. I don't know what else you would call it.

Mr. Jacobs: Q. So, if I understand, these figures you have, they came after a transmission of the figures through three or four different departments or hands, namely, the paid loss sheets, and from that to the cards, from the cards to the book of losses and book of paid losses, and from that to these instruments that you now suggest you took your figures from, in making this tabulation?

A. Yes. Let me say something further here: That these [fol. 95] figures are all balanced with the figures that are in our records.

Mr. Jacobs: Q. Say that again, that last statement.

A. This information that is—

Mr. Jacobs (interrupting): Q. This information you have before you?

A. Yes, sir.

Mr. Jacobs: Q. Is what?

A. Is balanced with information that we have in our department, which comes through our cashier's department.

Mr. Jacobs: Q. You mean, for the purposes of this hearing were balanced or are you stating a bookkeeping fact?

A. A bookkeeping fact?

Mr. Jacobs: Q. Well, your statement is that these various matters went through the steps I suggested a while ago?

A. Yes, sir.

Mr. Jacobs: Q. Now, were all those steps taken under your supervision?

A. Yes, sir.

Mr. Jacobs: Q. Including the making up of the original loss sheets?

A. No, sir, that is not part of my work.

Mr. Jacobs: Q. And the previous loss sheets, which is the foundation of this entire record, is not in your department, but is made up in the loss department?

A. Yes, sir.

Mr. Jacobs: Q. And the check is paid in the loss department?

A. No, paid in our department.

Mr. Jacobs: Q. The check was drawn——

A. (Interrupting.) The draft was drawn. I made the distinction. The draft for a loss is drawn in the loss depart-
[fol. 96] ment; is sent to the assured, and returned to us through the bank, and paid by us to the bank.

Mr. Jacobs: Q. And your record of that check, where is that kept?

A. In our department.

Mr. Jacobs: Q. I know, but in what book?

A. The cashier's record.

Mr. Jacobs: Q. That had nothing to do with this report you got up?

A. No, sir.

Mr. Jacobs: Now, defendant objects to the testimony in regard to losses as appearing in this tabulated form, as not being the best evidence, and not being the result of tabulations from records which were entirely made under the supervision of this witness, and because these records which are offered here are not the best evidence of the facts sought to be proven.

The Referee: Do you say, gentlemen for the plaintiffs that you propose to connect up this testimony with other testimony relating to the sources of information which are from departments over which this has jurisdiction?

Mr. Folonie: If necessary. I wish to ask him one question or two here. It may not be necessary here so to do.

Q. Mr. Toles, in the conduct of your business you mentioned the fact that you balanced out between your department and the loss department, you balanced the books. Now, what did you mean by the term "balance" there?

A. We have a way of checking the amount of our payments through our cash book with the amounts shown upon [fol. 97] the paid-loss sheets, the total of the paid-loss sheets.

Q. In other words, you arrived at the correctness of the loss sheets by comparing them with the payments as made out of your department, and struck a balance to prove the correctness of the figures that came to you from the loss department, is that it?

A. Yes, sir.

Q. So that under the supervision of your department, you ascertained the fact that the loss sheets coming to you in fact correct represent losses paid on Missouri business?

A. Yes, sir.

Q. And when a draft was drawn by the loss department and delivered to an assured and came to the bank for payment, what would your department give the bank to take up that draft?

A. A check.

Q. And would that check coincide in amount with the draft drawn by the loss department?

A. Yes, sir, to this extent: That we pay by one check covering several drafts.

Q. I mean, that the amount of the draft would be an integral part of an accumulation of such amount in a particular check?

A. Yes, sir.

Q. And are you able to state from your method of so keeping your books and records that the figures and records as contained in these books to which you have had recourse in making these tabulations do, in fact, correctly

state and set forth the losses paid and unpaid in the State of Missouri for the respective years in question?

A. Yes, sir.

[fol. 98] Mr. Folonie: Now, we respectfully submit, if the referee please, that this further examination—we have made the necessity of further evidence to make this competent unnecessary.

Mr. Jacobs: I would like to ask him one more question or two, perhaps.

Q. You say, at times, perhaps always—I didn't understand you one way or another about that—but at least at times that the checks which were issued by your department to pay drafts would sometimes cover a number of drafts?

A. Yes, sir.

Mr. Jacobs: Q. That is, cover a number of different losses?

A. Yes, sir.

Mr. Jacobs: Q. Losses which may have transpired in Missouri and Illinois?

A. Yes, sir.

Mr. Jacobs: Q. So your check upon the paid loss sheets which appeared in your department or in the tabulation room from the loss department couldn't be balanced by the checks issued the banks to cover drafts at the bank for losses?

A. Why not?

Mr. Jacobs: Q. Because your check might cover losses in varying parts of the country?

A. The check stub would show where those losses were paid.

Mr. Jacobs: Q. What check stubs?

A. The checks tendered the bank in payment of the draft.

Mr. Jacobs: Q. You didn't testify a moment ago that you kept a stub covering integral parts of your draft, did you?

A. It wasn't asked me.

Mr. Jacobs: Q. You are now saying that you have a stub of it?

A. A stub for every check.

[fol. 99] Mr. Jacobs: Q. And you now have these stubs covering these losses during this 5-year period?

A. Yes, sir.

Mr. Jacobs: Q. And these stubs enumerate the losses by those checks you have there?

A. Yes, sir.

Mr. Jacobs: Q. Those various losses are covered in some draft drawn at the bank?

A. Yes, sir.

Mr. Jacobs: Q. And did you make any record in your books beyond the recitation on the stub of the check?

A. In the cash book.

Mr. Jacobs: Q. But your cash book didn't figure in making up this report, did it, and you so testified a while ago?

A. Well, I didn't check each of these items in the cash book.

Mr. Jacobs: Q. Well, have you checked them with the stubs of these checks?

A. No.

Mr. Jacobs: Q. You say, however, that these cash books itemize those figures as they appear on the stubs of the checks?

A. Yes, sir.

Mr. Jacobs: Now, with reference to the accuracy of that book, the cash book, and the loss sheets, what can you say about the balance between them?

A. They are audited each week and balanced.

Mr. Jacobs: Q. In what department?

A. My department.

Mr. Jacobs: Q. That is the loss sheets there, isn't it?

A. Yes, sir.

Mr. Jacobs: Q. Along with the cash book of your department?

A. Yes, sir.

[fol. 100] Mr. Jacobs: Q. And what record is kept of that? Where is that and what book is that kept?

A. There is no record of auditing. It is simply an auditing by the voucher of the two different records, a comparing of them. You wouldn't have any permanent record of them. If the total of your paid loss sheets checked out with

your total payments that day, you would consider that a balanced record.

Mr. Jacobs: That is all.

Mr. Folonie:

Q. Those books and records you mentioned were kept in the regular course of your business during the period mentioned?

A. Yes, sir.

Q. And entries made contemporaneously with the evidence under your supervision?

A. Yes, sir.

Q. And these drafts that were mentioned as issued by the loss department for which you would issue a check, what would happen to your books when you were paid the check? Who would it be tendered by?

A. They were run through our books.

Q. They were run through your books and received by you from the bank, by your department?

A. Yes, sir.

Q. And the bookkeeping entries made and then those original drafts returned to the loss department, is that correct?

A. Yes, sir.

Q. These tabulations you have here respecting losses were made by you from these original books in which entries were made contemporaneously during 1917 to 1921?

A. Yes, sir.

[fol. 101] Mr. Folonie: We submit that the witness has been rendered competent, if the Court please.

The Referee: Q. Where did these loss sheets originate?

A. In the loss department.

The Referee: Q. And that is not your department?

A. No, sir.

The Referee: I think, gentlemen, that you require some additional evidence with respect to the method of doing business, the volume of business done, the number and size of books and entries contained in those books, in the loss department where those loss sheets originate for this tabu-

lated statement which comes before us. These tabulations are, in themselves, secondary evidence made admissible by reason of the practical impossibility of examining into voluminous records. So that it seems to me that every matter contained in those tabulations before they can be admissible in this form must be shown to originate in records so voluminous in character as to render their examination practically impossible.

Mr. Folonie: I think perhaps the court's point may well be deferred to and I will ask a question designed to meet the court's suggestion.

Q. Mr. Toles, these loss sheets that come to you as you have indicated and showing the losses from time to time, how many in number and volume would they be for this period of five years?

A. You mean the actual loss sheet records?

Q. Yes.

A. Possibly a dozen.

Q. And how do they come to you?

A. The sheets?

[fol. 102] Q. Yes.

A. They come to us every week.

Q. And you think that there would probably be a dozen of them covering the 5-year period?

A. I think so.

Q. How is that?

A. Yes.

Q. Do you mean a dozen sheets or a dozen books?

A. A dozen books.

Q. And you bind these sheets into book form, do you?

A. Yes, sir.

Q. And how many sheets in one of these books, approximately?

A. Oh, I should say eight or nine hundred, possibly a thousand.

Q. So you would have something like 12,000 sheets, perhaps, more or less in these loss record sheets?

A. Yes, sir.

Mr. Referee:

Q. What would be the approximate number of entries upon each loss sheet—upon an average?

A. I think our paid loss sheets carry about thirty entries.

Mr. Folonie:

Q. Each?
A. Each sheet.

The Referee: Q. You have nothing to do with the making up of those loss sheets at all?

A. The actual writing of the sheets, no, sir.

The Referee: Q. I mean, those sheets are prepared in a separate department of the company's business?

A. Yes, sir.

The Referee: Q. That department is not under your jurisdiction?

A. No, sir.

The Referee: Q. And those loss sheets were not prepared under your supervision?

A. No.

[fol. 103] The Referee: I think, gentlemen, you should go into that department and show the facts there by those having the knowledge.

Mr. Hogsett: I suggest this idea, that the same thing might be said to be true with regard to premiums. The fact which makes it competent to prove tabulations from original records is the fact that they are kept in the usual and ordinary course of business by the companies at the time entries made contemporaneously with the events recorded, and that the size and number of the records themselves would make it impracticable to offer them in evidence. Now, it is not essential, as I understand the rule, to go to the ultimate end and prove the transaction from its inception. If we had to do that, we would have to produce each agent who recorded the premium because the whole report referred to by the witness with respect to premiums originates with the agents all over the state. Not like the loss sheets originated with another department, but the fact which makes it competent to prove the tabulations based upon that is the fact that they are made in the usual and ordinary routine and in the regular course of business. The loss sheet is exactly analogous to the daily report in that it is the first entry on paper of the transaction.

The Referee: What daily report?

Mr. Hogsett: The daily report referred to by the witness with respect to premiums. You recall that when we were examining him regarding premiums we proved that the transaction in a given policy originated with a daily report [fol. 104] from, we will say, for example, at Columbia, Missouri, by the agent sending to the company—the information on the sheet or daily report posted into his records and from those records his tabulation is made.

The Referee: The point I have in mind is this: here is a large number of loss sheets segregating the 5-year period here involved many thousands, the witness testifies perhaps thirty entries to the page. Now, those sheets come to his department already made up. He has no knowledge, so far as is here disclosed, of the accuracy of those sheets nor of the sources of information from which they are drawn. He has nothing to do with their manufacture or production, and that is a different department. Now, I am of the opinion that much the same sort of evidence with reference to that matter from that department should be produced as has been produced with reference to the documents which are made up in this witness' department.

Mr. Hogsett: But add to that, Your Honor, the fact that the losses are the—are actually paid through his department, and that he has testified that his record of losses paid is checked against the record on the loss sheets. In other words, the ultimate act—the giving of the money out of the coffers of the company is directly under his supervision, and he has said that those entries showing payments are checkable with and do check against the entries on the loss sheets. So that you could abandon and waive the competency of this evidence, the loss sheets, entirely. Just the same as if they never existed. He paid the money.

[fol. 105] Mr. Jacobs: Excepting that the payment of the money does not prove the accuracy of the loss.

Mr. Hogsett: It proves certain money paid.

The Referee: It proves certain sums of money has been paid out for certain purposes.

Mr. Hogsett: That is correct, yes.

The Referee: Now, the number and the amounts of those losses it appears from the testimony of this witness are

within the jurisdiction of a department other than his own. His department pays the money, that is true, but I doubt if that is all that is necessary to be shown.

Mr. Barker: It is 12:40 now. Hadn't we better adjourn?

The Referee: Yes.

Mr. Folonie: Well, if the Court is prepared to adhere to his ruling we will make a process——

The Referee (interrupting): I am not presuming to make suggestions respecting your side of the case, but I think that is a very good idea. We will adjourn now until two o'clock.

(Whereupon an adjournment was taken until two o'clock in the afternoon of the same day, the same being Wednesday, the 6th day of June, A. D., 1923, at which time parties reconvened at the same place, and the following proceedings were had.)

The Referee: You may proceed, Mr. Folonie.

[fol. 106] (Whereupon the witness Toles was temporarily withdrawn from the stand.)

H. L. Dalton, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name, please?

A. H. L. Dalton.

[fol. 107] Q. Are you connected with the Royal Insurance Company, Mr. Dalton?

A. I am.

Q. And what is your office or position with that company?

A. Second assistant manager.

Q. During the period 1917 to 1921, which, by the way, is the only period about which we are interested in this particular lawsuit, were you connected with that company during that period?

A. I was.

Q. What was your position during those years?

A. Charge of the losses.

Q. And did you or were you an officer of your company during that period or any of it?

A. Yes, sir.

Q. What?

A. Second assistant manager.

Q. And in connection with your duties during that period, did you during the years mentioned have charge of the loss department of your western department of the Royal Insurance Company?

A. I did.

Q. Now, there is presented here two stacks of books which are heaped on the floor here. What is the nature of those books—what do you call the contents of them?

A. You have two sets of books there. You have what we call our new loss records, which is compiled week by week at the time the losses are reported to the company, and you have a separate series of records consisting of the paid losses which represent the sheets compiled week by week, showing the amount paid, including all states.

Q. So you have two distinct sets or kinds of loss sheets, have you, and bound in book form?

A. Yes; separated, of course, on fire, tornado and automobile.

[fol. 108] Q. Yes. And do these sheets cover the State of Missouri or do they also include other states?

A. They include all states, but Missouri is in there.

Q. That is, you cover how many states in these books?

A. Fourteen states.

Q. And the loss sheets for this period here in these books here, are they in the fourteen states, are they, Missouri being among them?

A. They are.

Q. And are the mass of figures separated in those or are they haphazard, so to speak?

A. Your paid losses—let me look at that paid loss sheet a minute. (Witness examines document.) They will show—have to pick them out, each state by itself.

Q. Well, just open this book that you just handled here, at random—is that a typical page where I turned to and opened it, or, if not, open to one that is?

A. That is our standard page.

Q. Now, to what state—they happen to be all of the same state on that page, do they not?

A. No. One is Iowa, and the rest Cook County. They come serially.

Q. The particular ones on this is Iowa first, and then the rest——

A. (interrupting) Yes.

Q. Here you have turned another sheet at random, what state is that first item on that page?

A. Kentucky.

Q. And the second?

A. Illinois.

Q. "Cook," what does that mean?

A. Cook County.

Q. That is the county in which Chicago is located?

A. Yes.

[fol. 109] Q. And the next one?

A. Nebraska.

Q. And the next after that?

A. Michigan.

Q. Well, does that illustrate the general method in which these sheets appear—I mean, so far as distinguishing the state is concerned?

A. It does.

Q. Now, were these sheets made under your general supervision and charge?

A. They were.

Q. I will ask you whether the losses, as reported to your company, were truly and correctly entered upon these various sheets?

A. Absolutely.

Q. And in the other books which you call "paid loss sheets" were the losses paid correctly entered as to the amount paid, the classification of the business upon which it was paid—that is, all those matters entered on those sheets, directly—truly and correctly at the time?

A. They were.

Q. Was that done as a part of the regular business routine of your company?

A. Exactly.

Q. What was done with these loss sheets when you had made them up and the sheets completed, what did you do with them?

A. The original sheets of which these are duplicate copies, made by one operation, are forwarded to the head office of the company. This is our copy.

Q. When you say "copy" you mean a carbon duplicate?

A. A carbon duplicate.

Q. In other words, you made two copies, one of which was kept here and one of which was sent to New York?

A. That is correct.

Q. What was done with the copy that you kept in this office?

A. Bound in these books.

[fol. 110] Q. I am trying to find out whether it got to Mr. Toles in any way?

A. It goes to the accounting department each week, they make their record, the figures are balanced with the cash, and the accounting department then makes that the basis for all their compilations.

Q. Now, are these sheets numbered in these books so that you can tell how many sheets there are in a book?

A. There is a folio number carried through.

Q. Well, is that the number there (indicating)?

A. Yes.

Q. 696, in this one, on the top of the heap here.

A. You have—we have sheet number and folio number.

Q. Can you tell how many sheets in this book from this numbering here—this book that I have opened?

A. I couldn't tell offhand, no.

Q. I mean, is there any indication as to how many sheets you have here?

A. There is a folio number given which you get and then sheets in that week are numbered.

Q. What is the last number in this book—this one that I opened there?

A. 696.

Q. That is, that many folios, then, is it?

A. This would be your folio (indicating), and that would be your sheet number (indicating).

Q. Now, when you say sheet number, does that mean the number of pages?

A. The number of pages consecutive.

[fol. 111] Q. Yes. Now, about how many items are there on one of those sheets? Suppose you turn here to some

page and just count the number of items on a page here. If that is not a representative page, then turn to one that is.

A. Well, of course, all pages are not used in full.

Q. No, I understand.

A. (Witness examines pages.) 29 different claims showing, itemized on this page.

Q. And what is the total concerning each one of those—what is the detail concerning each one of those which is shown on that page?

A. Well, it gives our serial claim number, the policy number, the gross loss, re-insurance, agency, state, classification——

The Referee (interrupting): Let the witness read a typical entry into the record.

Mr. Folonie:

Q. Yes, just read one entry, please, from beginning to end.

A. Well, one with re-insurance on it——

Q. (Interrupting.) Suppose you identify the page in some way so we will know where to find it.

A. Suppose I find a page with a Missouri item on it?

Q. Very well.

A. E No. 12568, policy No. 11897, payment 15.62, re-insurance covered, $9.90; expenses—and I might explain that expense items don't always follow the loss items—agency No. 6494, St. Louis, Missouri; classification B-137-P.

Q. What does that mean?

A. That is classification number.

[fol. 112] Q. What do you mean by classification number?

A. That would be a brick construction; 137-P indicates your class.

Q. What classification is that?

A. National board classification.

Q. And that is typical of interpretation, if it was necessary—if it was of any materiality, is it?

A. It is. That is folio 58, sheet No. 616.

The Referee: Book?

A. Book is backed, "Paid loss sheet, July 1st, 1918 to December 31, 1918, inclusive."

Mr. Folonie:

Q. Now, how many books have you brought in here that relate to the period we have in mind? Suppose you count the number of books and tell us how many books you have here.

A. Twenty-three.

Q. And I notice there are two general sizes——

A. (Interrupting.) Twenty-two, make that.

Q. All right. Now, there are two general sizes of sheets; approximately what is the size of the sheet of this larger type here?

A. I couldn't tell you that offhand.

Q. You can give it to us approximately, can't you?

The Referee: About 14 by 20.

Mr. Folonie:

Q. And this particular book happens to be four inches in thickness, would you say, Mr. Jacobs?

Mr. Jacobs: How is that?

Mr. Folonie: And this particular book happens to be four inches in thickness, would you say, Mr. Jacobs?

Mr. Jacobs: I expect so; three or four inches. A good big, thick book.

Mr. Folonie: All right.

[fol. 113] Q. And this other set of books is approximately half the size, so far as the size of the sheet is concerned as the one you have just been describing, is it not, Mr. Dalton?

A. It is.

Mr. Folonie: I think that is all with this witness.

The Referee: Do you gentlemen desire to cross-examine this witness?

Cross-examination by Mr. Jacobs:

Q. You say these books, Mr. Dalton, or these sheets were prepared under your supervision, in your department?

A. I have full charge of everything pertaining to that.

Q. You are assistant manager, aren't you?

A. Yes.

Q. Are you the head of this particular loss department?

A. I am.

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Q. Are you the head of an accounting department?

A. I am not.

Q. What is your title besides assistant manager of the entire concern? Have you any other title?

A. None.

Q. But your particular activities are in this department?

Mr. Folonie: Pardon me. Suppose you relate it to the period in question. You are using the present tense. I don't know whether it has changed.

The Referee:

Q. During the years '17 to '21, inclusive?

A. Yes.

Mr. Jacobs:

Q. I mean, during the period from January, 1917, to the end of 1921.

[fol. 114] A. I have been in full charge of the loss department—claim department, handling all claims and records.

Q. And the handling of the loss department?

A. Yes.

Q. You are in charge of that department?

A. Yes.

Q. You, of course, did not do the manual work of making up these sheets, did you?

A. No.

Q. You used the word "absolutely"—that they were "absolutely correct," you are basing that on the fact that they were kept in the course of business, I suppose?

A. Kept in the course of business and balanced figures.

Q. Are the figures balanced in your department?

A. Balanced with the accounting department.

Q. Are they balanced in your department or the accounting department?

A. Balanced against the figures furnished by the accounting department or the cashier.

Q. In other words, does the cashier furnish figures with which your department balances?

A. Yes.

Q. The figures are furnished by the accounting department by which the loss department strikes a balance, or

does the loss department furnish certain figures by which the accounting department strikes a balance? Which way is it—which one is it that strikes a balance?

A. The loss department must strike a balance with the accounting department from the cashier's figures showing expenditures.

[fol. 115] Q. On these sheets I see occasionally an item which has been crossed out with a red line. What does that mean?

A. I would have to see the entry perhaps to tell you that.

Q. Here is one that is not in Missouri but it will probably go to explain what I am asking about. This last item on page—what page is that? It has no page number, has it?

A. 37—19, you have here the outstanding losses taken at the end of the year, and you will find quite a good many things on that list of outstanding losses because we draw these sheets first and then correct them before we finally complete our outstanding record.

Q. What is this correction here (indicating)?

A. That list of losses was paid before we closed our outstanding figures to carry them into our annual statement.

Q. Explain that a little more fully.

A. At the end of each year we draw off our outstanding losses. We have a vast amount of detail in connection with it. We draw them off before we make our final figures and then make frequent corrections in the outstanding sheets and simply carry that corrected sheet into our records as the beginning of our following year and get our incurred losses so that the corrections here are made before the total of outstanding losses were carried into our statement, our annual statement.

Q. This particular item—I see just one here——

A. (Interrupting.) Here is changes.

Q. This last item, what does that mean?

A. That means that loss was paid before the final balancing of the outstanding losses was made. Payment was made after the sheets were drawn off.

[fol. 116] Q. Payment was made afterwards?

A. Yes; but before we made our balancing.

Q. What do these sheets show in the main, if you know, with reference to the relative amount of estimated and paid losses?

A. We always carry at the inception the report of the claim and estimate, of course, and then our payments are posted here afterwards and the losses paid. That will show on your paid loss sheet.

Mr. Jacobs: I believe that is all I will ask about this particular matter at this time—I mean, with reference to the competency.

Redirect examination by Mr. Folonie:

Q. I will ask you one question that may clarify what counsel wants. If you carried a loss as an unpaid loss to your sheets in fact existing on December 31st, and on the 5th of January immediately following, a report should come in showing that the loss had in fact been adjusted and paid on December 30th and had not gotten on to your records, then you would go back and make a correction, would you?

A. No. I will explain that just a step further. We have such a volume of detail at the close of the year that these sheets of outstanding losses are drawn off perhaps two or three weeks before the close of the year; before the 31st of December. Every erasure or omission there, lining out, would be for some loss which was paid before the 31st of December or on the 31st of December, when our cash closes. Every loss that is paid after that time and in the following year would be a transaction of the following year and would [fol. 117] show as a payment against an open item here. There would be no payments on any ruled-out item.

The Referee: Q. If I understand you, then, Mr. Dalton, the book which counsel now has before him, about which you have been testifying, shows as corrected, the true state of affairs at the close of the year?

A. Yes.

The Referee: Q. And those erasures or where entries are marked indicate changes which were made after the sheet was prepared but before the end of the year?

A. Yes, sir.

Mr. Jacobs (resuming cross-examination):

Q. Now, where did you get your estimated amount of loss? The estimated loss which appears in these sheets?

A. Comes from various sources, from adjusters or from the agents when the loss is first reported.

Q. In other words, the agent or an adjuster returns to the company an estimate of the loss and later on that loss is either paid or disposed of in some definite way?

A. We receive the estimate first before the loss is adjusted.

Q. I say, later it is disposed of in some definite way, either paid or in some other way. When you get the estimate from the agent or from the adjuster, then do you enter it upon this loss sheet?

A. Each week.

Q. When you make out your loss sheet you immediately enter the estimate that has been sent in by the adjuster or the agent?

A. Yes.

Q. Well, do you know why so many of the estimated losses are changed? The amount of the item, I mean? Not the [fol. 118] difference between the estimate and the final adjustment, but I mean the change in the amount of the estimate itself?

A. If you will pardon me——

Q. For example, right here, on this page for December 31, 1918, there is an estimated loss of $300, and that has been ruled out with red ink and changed to $49.18.

A. That means that before the final closing of the year we received our proof of loss showing that that was adjusted at $49.18, but not paid until after the 1st of January, and therefore we carried it in at the adjusted figure.

Q. That appears in many places here. Where is it ruled out and no payment usually at all, that means the whole matter was concluded after the 1st of the year.

A. Before the first.

Q. And no record of payment?

A. Yes, when it is all ruled out that is concluded before the 1st of the year.

Q. Well, where is the record of that payment?

A. The record of that payment will show in the paid loss sheets.

Q. And all of these instances, I notice that wherever there is a change of the estimate it is changed from a consider-

ably larger figure to a considerably smaller figure, $400 to $250; and $300 to $49.18; and $75 down to $19, and so forth.

A. There may be an occasional item that is increased. We aim to get the closest estimate we can. If a loss has not been adjusted at the close of the year and we have information showing the claim will run to a lower figure we enter it at the lower figure.

[fol. 119] Q. In your paid-loss sheet you have various ways of designating the localities; how do you designate them, always by state?

A. No, there are one or two exceptions to that, which we may understand. "Ham." would be, for example, Hamilton County, Ohio. "Cook" would be Cook County, Illinois.

Q. Are there any others besides Hamilton and Cook County?

A. I don't recall any others.

Q. Why are they carried in that fashion?

A. Well, they are old designations that have been that way for a good many years and thoroughly understood by the company and by ourselves. We didn't make up these books for an examination otherwise; our own records.

The Referee: These were intended rather as business rather than literary products?

A. Yes.

Mr. Jacobs: Q. When were these changes made on the estimate?

A. You will only find those changes on the outstanding sheets. If you will turn to the going weeks, week by week, you will not find those changes. Now, here is a sheet, sheet No. 80. You will find no changes on these, because these are copies of the sheets which go to the head office of the company. These are never changed. You will find all of those changes on the outstanding, because that is a working sheet. That is a working sheet that we use at our closing of our year, and that explains all of those changes, but you won't find any changes in the estimate.

Mr. Jacobs: Q. What did you mean a while ago when you said that the loss item was not always followed by an [fol. 120] expense item?

A. I referred to the paid-loss sheet where you find in some cases the expense item on that particular claim will appear at the same time the loss payment appears. At

other times it will not, because drafts are not presented at the same time—the draft was not presented at the same time.

Mr. Jacobs: Q. I notice on this sheet some loss items are followed by expense items and some are not.

A. Well, we don't have expense items on all claims.

Mr. Jacobs: I believe that is all.

Mr. Folonie (resuming redirect examination):

Q. Your attention was called by counsel to the fact that some of the estimates he called your attention to there proved to be higher than the amount ultimately paid. I suppose sometimes they will also prove to be lower?

A. They do.

Q. An estimate, as the name implies, is somebody's guess or estimate rather than an exact or definite figure?

A. Merely an estimate, always.

Recross examination by Mr. Jacobs:

Q. What would you say the rule was about that?

A. I don't think I understand your question quite.

Q. What is the general rule about the relationship between the estimate and the actually paid loss?

A. They very frequently run over the estimate. I would say that perhaps ordinarily they would run under. Sometimes they run very heavily over. Ten or twenty thousand dollars.

Q. Over the estimated loss?

A. On a big claim.

[fol. 121] Q. There is one I don't understand there (indicating). Is that a ten dollar estimate there?

A. Yes.

Q. I thought that was 833. All along that sheet in every instance I believe they are all smaller than the estimated loss, aren't they—unless they are exactly the same?

Mr. Folonie: There was, we will admit, $1.66 difference between that estimate and the amount finally paid.

Mr. Jacobs: Here is the next one.

A. 53.69 against 75.

Mr. Jacobs:

Q. 75 is the estimate?

A. Yes. Here is 600 estimated and 600 paid. 500 estimated and 500 paid.

Q. The next one is a larger one, 25 estimated and 298—small ones?

A. Yes.

Q. $15 and $10. $225 estimated and $81.53 paid.

A. Yes.

Q. 450 estimated and 269 paid?

A. Yes.

Q. 280 estimated and 112 paid?

A. Yes.

Q. 1,500 estimated and 810—899 paid?

A. Yes.

Q. Outside of about one item there, they are—there are two or three that the estimated and the paid amount are the same, but the balance of them the estimate is higher than the paid amount?

A. Yes.

Q. Is that generally the way it runs through these sheets?

A. Runs both ways. We can't tell. We take the best information we can on our estimate because we want to [fol. 122] know as near as possible; but we can't tell. We have to leave it to the conclusions of the adjusters.

Q. Now, let's take this sheet, there is one, the top one is $26 more than the estimate.

A. Yes.

Q. The next one is 500 estimated and 85.20 paid?

A. Yes.

Q. And the next one is small. The next is 125 estimated and 46.75 paid. The next one is 16.40—more than the estimate. And so is the next one. The next one is 750 estimated and 343 paid. The next one is 750 estimated and 343. The next one is $3,750 estimated and $1,718 paid. The next one is even. Here is an estimate of $100 and $91 paid. The next one is even, and the next one is even. Now, in figuring our incurred losses. As a general rule the estimate is much higher than the actual loss paid, isn't it?

A. Usually yes. I wouldn't say much higher but usually higher.

Q. Considerably higher on that page, isn't it? Isn't that

the way it runs through generally, just like that on the other page that I read?

A. That is a hard question to answer, because I wouldn't want to say it was considerably higher. The figures show for themselves though, just what the difference is, from week to week.

Mr. Jacobs: I believe that is all; on the matter of the competency of these sheets.

Mr. Folonie: Nothing more.

(Witness excused.)

[fol. 123] O. G. Toles, recalled for further direct examination, having been previously sworn, was examined and further testified as follows:

Direct examination (cont'd) by Mr. Folonie:

[fol. 124] Q. Directing your attention to the year—to the item of expense of your company for the years 1917 to '21, inclusive, have you made a calculation from your books and records respecting expenses for those years?

A. Yes, sir.

Q. I will ask you to state—there has been some mention by us of prorating here—I will ask you to state what you have taken in the way of direct expenditures and what you have taken in the way of prorating—I mean, have you prorated as much as possible? Or taken as much directly as possible, or how have you gone at it?

A. Well, we took as much as we could as direct Missouri expense.

Q. That is, that which your books and records show was in fact expended on that particular phase of your expense in Missouri?

A. Yes, sir.

Q. And as such items as was kept on your books and records where it was not thus separable upon your records, how have you undertaken to ascertain the proportion thereof applicable to Missouri?

A. The proportion of the entire United States expense.

The Referee: Will you read that question and answer, Mr. Blume?

(Question and answer read by the reporter.)

Mr. Folonie:

Q. Now, just to get that a little more definitely, what proportion or figures have you used to arrive at the portion chargeable to Missouri on those matters which you have prorated?

A. The proportion that the United States gross net premiums bear to the Missouri gross net premiums.

[fol. 125] Q. Having thus ascertained a fraction which the premiums of Missouri bore to the premiums of the United States, of your company, you have then applied that fraction to the expenditure item and thus arrived at the portion to be allocated as to Missouri?

A. Yes, sir.

The Referee: The proportion being as the gross net premiums of the entire United States are to the expenses of the entire United States?

A. No.

The Referee: Q. As to the gross premiums of the State of Missouri?

A. Yes, sir.

The Referee: Q. And so are the gross expenditures—gross expenses incurred in the United States to the gross expenses——

A. (interrupting) Yes, sir, outside of the actual Missouri expenses.

The Referee: Q. Yes, outside of those which are peculiar to Missouri?

A. Yes.

Mr. Folonie:

Q. Now, the expense records of your company consist of what character and nature and kind of books? What kinds of books and records do you have upon expenses?

A. Well, we have our general books which show such expenses as salaries, rent, postage, telegraph exchange, advertising, printing of stationery and miscellaneous expenses of all character. We have also record of the agency expenses, commissions, loss adjustment expenses, taxes, inspections and service, supervisory expense.

Q. Now, you haven't undertaken to enumerate all of them in your recital? Just some of the leading ones, have you, [fol. 126] as an illustration of your point?

A. That is all.

Q. Now, were those expense records kept under your supervision?

A. Yes, sir.

Q. And if a check or a draft was made for expense items paid, what department of your company made those checks in payment of those items?

A. My department.

Q. And did you have a book equivalent to what is known as a cash book in commercial business?

A. Yes.

Q. And did you keep ledgers or journals or books the equivalent of journals or ledgers—journal entries and ledger entries as they exist in mercantile business in general?

A. Yes, sir.

Q. And when expenditures by way of salaries and rents and so on were paid, were they paid out of your department?

A. Yes, sir.

Q. And the entries upon the books, were they made contemporaneous or practically contemporaneous with the payment of such expenses?

A. Yes, sir.

Q. Were they truly and correctly entered under your supervision—allowing of course for such natural errors as may now and then arise in any bookkeeping?

A. Yes, sir.

Q. And according to the best of your knowledge and belief, are your books and records correct?

A. Yes, sir.

Q. How many books or how large a volume of books have you which relate to expense—perhaps you can do it comparatively, with this group of books you have produced [fol. 127] here on losses—the group of books which would cover expenses, how do they compare with this batch of books we have here?

A. Well, I could say the books that cover our agency expenses alone would be fourteen of those, and they are larger than any of those books.

Q. And what about the other character of expenses?

A. The other expenses, I would have to produce the cash books which are larger than any of those books. I would have to have our general books—which are not so very large, because they contained totals only.

Q. And your cash books would be about how many in number for the 5-year period?

A. Well, there is one, and I think in one or two cases two, for each state.

Q. Now, to direct your attention to expenses of designated character, as I am informed your records are kept—did you have for the period in question as a separation of expenses upon your books the item of "loss adjustment expenses"?

A. Yes, sir.

Q. What did you mean by "loss adjustment expenses"?

A. That is expenses that are paid to adjusters or adjusting companies; to cover the expense of handling and adjusting losses.

Q. Is it inclusive, or does it exclude the expense of adjusters and those employed on salary?

A. Includes that.

Q. I direct your attention specially to that because I assume you have a salary item here somewhere too?

A. Yes.

[fol. 128] Q. But your salary and your adjusters would go into loss adjustment expense, as you kept your books, would it?

A. Yes, sir.

Q. Have you made a computation from your books and records of the loss adjustment expense year by year of your company for the five years in question?

A. Yes, sir.

Q. What was such loss adjustment expense, giving it year by year for the five years here in question?

A. Each year?

Q. Yes, just recite the year and then amount of loss adjustment expense for that year?

A. 1917, $6,686; 1918, $7,975; 1919, $8,295; 1920, $9,471; 1921, $3,961.

Q. Now, will you give the total for the five years in your loss adjustment expense?

A. $36,388.

Q. Now, these loss adjustment expenses you have recited, is that an actual figure, by which I mean that which was actually paid for loss adjustment expense for the State of Missouri, or was it arrived at by the prorating method you have mentioned?

A. That was the actual expenses charged to the State of Missouri.

Q. Was it the actual amount paid for the State of Missouri for that year?

A. Actual amount paid.

Q. Now, agents' compensation. Have you a separate item of agents' compensation in your books and records?

A. Yes sir.

Q. Your conduct of your business compensates those who get your business from policies—persons taking poli-
[fol. 129] cies by what form of compensation to the agent?

A. Commission.

Q. And do the agents in addition to a fixed and agreed commission receive anything else in the way of expense or compensation or remuneration besides commission?

A. Yes, sir.

Q. What?

A. Postage.

Q. Is that included in your item of agency compensation or not?

A. It is, yes, sir.

Q. And what is your postage item with agents cover—I mean, what postage do you allow them?

A. At the rate of five cents for each policy written.

Q. And does that cover their communications to you in sending you daily reports? Is the postage on those embraced in that item?

A. I presume so, yes.

Q. Do you make them any additional allowance for sending in the daily reports outside—besides this allowance you have mentioned?

A. No, sir.

Q. In other words, it is up to them to spend more or less on postage as may to them seem proper, but that is a fixed amount that you allow them, is it?

A. Yes, sir.

Q. And has that general custom of so allowing postage

charges to agents existed during the period you have been with this company?

A. Yes, sir.

Q. Is that the general custom of companies in this business, as you understand it to be?

A. I so understand it, yes, sir.

[fol. 130] Q. What else is in the item—I will call this item No. 2, the first having been loss adjustment expenses. What else is in that besides commission and postage—anything else?

A. I don't know of anything else.

Q. Will you state what the agents' compensation as you have stated it, as made up on your books—what it was according to your books and records for each year in the period here in question?

A. 1917, $53,386; 1918, $66,500; 1919, $76,185; 1920, $85,724; 1921, $82,940; Total, $364,735.

Q. That last figure you have given is the total for the five years, is it, of that item?

A. Yes, sir.

Q. Now, have you any agents' allowances other than those mentioned in item 2 as you have recited it?

A. No, sir.

Q. On the sheet on which you made your calculation, there is item No. 3, agents' allowances. You have nothing in that line, have you?

A. No, sir.

Q. Item No. 4 "Field supervisory expenses." Will you state of what that consisted and what the character and general nature of the supervision was for which those expenses were paid?

A. That was the salary and expenses of our field men; I might say that their expenses are traveling expenses over the territory under their jurisdiction.

Q. Just what is a field man?

A. A man who has chargeof a certain section of the country, either one state, or a part of a state or two states.

Q. Well, suppose your field man has charge, we will say, of three counties in Missouri, for example. What would [fol. 131] he do there?

A. He would visit points, different towns in the counties, supervise the agencies in these counties, appoint new

agents; report to us upon the general conditions in the different towns and make inspections for us and things of that character.

Q. He is something of a gang foreman, in a sense?

A. Absolutely.

Q. He is the man immediately above the local agent and supervises the way they are doing their work?

A. Yes.

Q. Now, suppose an agent had been guilty of some misconduct so that you wanted to terminate his agency, what man of your company would go there and take up his supplies and close out his agency?

A. The field man.

Q. And if a new agent was to be selected and appointed in a given territory, who was the man who would have that in immediate charge?

A. The field man.

Q. And if there was a question as to whether an agent was properly reporting his policies he was writing and making proper remittances of the premiums, who is the man in immediate charge of that kind of work?

A. The field man.

Q. Now, what does the field man have to do, if anything, with respect to inspections of property; if no insurance exists and it is supposed to write insurance, and the question arises that an inspection is necessary, does the field man have anything to do with that?

A. Yes.

[fol. 132] Q. What does he do?

A. Notice is sent to him of the inspection they want made of a certain property, and he goes and inspects it.

Q. And in the event that the field man and the local agent are in disagreement as to the desirability of taking a certain risk, which one has the final determination as to whether the risk shall continue or not?

A. The field man.

Q. What was the field supervisory expense of your company in Missouri year by year from 1917 to 1921, inclusive?

A. —

1917	$10,850
1918	$22,472
1919	$11,505
1920	$17,767
1921	$16,735

Q. What was the total for the five years?

A. $79,329.

Q. In the item of field supervisory expenses, is that an actual figure, in fact, expended in Missouri, or is it one arrived at by prorating?

A. It is the actual expense.

Q. Item 5, rents. Have you any rents in Missouri where the rents were in fact paid in Missouri and your activities in that state?

A. No, sir.

Q. And have you any furniture and fixtures in the State of Missouri belonging to your company?

A. No, sir.

Q. No expense in that connection in that state?

A. No, sir.

[fol. 133] Q. As a direct expense?

A. No, sir.

Q. Now, with respect to inspections and surveys, what, is the method in which you kept your books, did you put in the item of inspections and surveys?

A. The cost of maintaining the Missouri Inspection Bureau, the Missouri Audit Bureau, and the St. Louis Inspection Bureau and the Inspection Bureau at St. Joe.

Q. Well, do you mean that the Royal Insurance Company supported all those organizations itself?

A. No, sir. That is the proportion of the expense that they were obliged to pay for the support of those bureaus.

Q. Those bureaus were supported by charges made to the respective companies which were subscribers to those different bureaus and departments?

A. Yes, sir.

Q. Have you now mentioned all that is in the item of inspections and surveys, the maintenance of these various organizations that you mentioned? Is that all you have in that item?

A. Yes, sir.

Q. And what is the general nature of the service that

those people perform for you? Suppose you propose to take issue on a piece of property in St. Joseph, Missouri, for example. What would you get from these people?

A. Well, I say, that is an underwriting matter.

Q. Well, I mean, do you know what kind of service or inspection you get?

A. I can't say, no.

Q. All you know is that they get paid for service, the exact nature of which you are not informed of, is that it?

A. Yes, sir.

[fol. 134] Q. And these amounts that you have entered in those books in that particular, were in fact paid by your company, were they?

A. Yes, sir.

Q. What were the amounts of those payments in that respect for the various years, 1917 to 1921, inclusive?

A. —

1917	$5,105
1918	$7,531
1919	$9,593
1920	$6,399
1921	$12,173

Q. What is the total for the five years upon inspection and surveys?

A. $40,801.

Q. Now, have you on your books and records figures respecting taxes, licenses and fees in the State of Missouri?

A. Yes, sir.

Q. Now, take Federal taxes, for example. What character of Federal taxes had your company paid?

A. They had none in Missouri.

Q. And what type of state taxes had you?

A. A two per cent state tax on premiums.

Q. And what license fees for doing business in the state?

A. Yes, they paid license fees. I took the item over into patrol taxes.

Q. What do you mean by "patrol"?

A. Taxes that are paid in the cities for maintenance of fire patrol.

Q. And there was a definite amount to be paid by you for support of that organization in the different cities?

A. Yes, sir.

Q. And is that item included in the item of taxes, licenses and fees?

A. Yes, sir.

[fol. 135] Q. What is the amount in Missouri for taxes, licenses and fees paid by your company in the respective years, 1917 to 1921, as shown by your books and records?

A. —.

1917	$6,949
1918	$6,962
1919	$10,564
1920	$9,974
1921	$12,128

Q. Now, for five years what was the amount of your taxes, licenses and fees?

A. $46,577.

Q. Now, I suppose that the items of expense such as home office salaries and departmental management and things of that kind, did you keep those actually for the State of Missouri as actual figures or were those prorated?

A. Those were prorated.

Q. Now take the items which you have mentioned so far, which, for the purpose of convenience, I call actual expenses as distinguished from apportioned expenses; will you state what the amount of such expenses for the year 1917 was, as you have already recited the items, according to the different divisions into which they were divided in your books?

A. 1917, $82,976.

Q. Now, you may proceed with the other years.

Mr. Jacobs: I didn't exactly understand that question. You said something about the "apportion," didn't you?

Mr. Folonie: I am taking a total of the so-called actual expenses; having him give the total on those now and then [fol. 136] I will go to expenses carried as a separate expense.

The Witness:

A. —

1917	$82,976
1918	111,440
1919	859
1920	129,335
1921	127,937

Mr. Folonie:

Q. The five years?

A. Total, $567,830.

Q. Now, does that include now all of the expenses which, from your books and records, you may calculate by taking the direct expense in Missouri as distinguished from some method of apportioning?

A. Yes, sir.

Q. Now, of those apportioned, you may state what the apportioned expenses consist of?

A. Home office salaries and expenses.

Q. Now, you say "home office," what do you mean by "home office," to start with?

A. That is the item that is shown on the annual statement form under the heading of "Home office salaries and expenses."

Q. I suppose, when they take an item, the manager of the Western Department, does he come in home office expenses?

A. Yes.

Q. And if he receives a salary, I don't suppose he receives part of his salary for the State of Missouri and part from Illinois—he receives it in one sum, presumably?

A. Yes, sir.

Q. And the expenses of your Chicago office which comprises the fourteen states—do you attempt to keep the [fol. 137] salary of your various employes in this office, to keep one of them working on Missouri and another on Illinois, or do they work on the whole department indiscriminately?

A. Work on the whole department.

Q. And have you ever had any method, or is there any known to you, of keeping those expenses as they are incurred from day today by states?

A. No, sir.

Q. Now, what method have you adopted in apportioning those overhead expenses to the State of Missouri?

A. A proportion.

Q. Now, have you—you have taken that proportion as you have previously mentioned—you stated your method of apportioning. Is that the one you have adopted now in these overhead expenses?

A. Yes, sir.

Q. Now, you may state if you have those apportioned expenses divided into more than one class or group?

A. I think there are two. Federal taxes and miscellaneous expenses. They are apportioned separately.

Q. You have those separated from your other overhead expenses, have you?

A. Yes, sir.

Q. So that it is possible from your figures to tell how much of your apportioned expense is Federal taxes and how much is miscellaneous matters as distinguished from the overhead in the way of salaries and rents et cetera, that come in overhead, is that right?

A. Yes, sir.

Q. Now, you state the amount of that apportioned expense here upon salaries, expenses, rents and items other [fol. 138] than Federal taxes and miscellaneous small items, year by year?

A.—

1917	$23,432
1918	36,844
1919	40,282
1920	52,221
1921	59,907

Q. How much for the five years?

A. $212,686.

Q. Now, will you state the Federal taxes as so apportioned to Missouri for each of the five years in question?

A.—

1917	$674
1918	7,408
1919	6,160
1920	11,566
1921	5,606

Q. What is the total of the five years for Federal taxes?

A. $31,414.

Q. Do you know, offhand, why the Federal taxes jumped so from 1917 to 1918?

A. No, sir.

Q. Now, "Miscellaneous"; what is your allocation to

Missouri on the pro rata basis you have mentioned for the respective years on that item?

A.—

1917	$1,300
1918	680
1919	859
1920	1,247
1921	1,456

Q. How much for the five years?

A. $5,542.

[fol. 139] Q. Now, will you state, please, your calculation on the total expenses, both actual or direct and apportioned combined, so as to give us the total expenses, year by year, for Missouri, as shown by your books and records?

A.—

1917	$108,382
1918	156,372
1919	163,443
1920	194,369
1921	194,906

Q. And the total for the five years?

A. $817,472.

Q. Now, have you made a computation of the expenses which were due and unpaid on December 31—commencing with December 31, 1916, and to December 31, 1921?

A. Yes, sir.

Q. What were the expenses due and unpaid on December 31, 1916?

A. $6,563.51.

Q. And as of December 31, 1917?

A. $5,539.30.

Q. As of December 31, 1918?

A. $6,672.98.

Q. As of December 31, 1919?

A. $7,020.85.

Q. As of December 31, 1920?

A. $8,135.29.

Q. As of December 31, 1921?

A. $8,043.23.

Q. Have you made a computation of the amount of un-

earned premium reserve on Missouri business as of December 31 of the years respectively, 1916 to 1921?

A. Yes, sir.

Q. And what was the unearned premium reserve on your business as of December 31, 1916?

A. As applied to Missouri?

[fol. 140] Q. Yes.

A. $201,980.

Q. And what was it as of December 31, 1917?

A. $213,727.

Q. And as of December 31, 1918?

A. $282,601.

Q. And what was it as of December 31, 1919?

A. $280,748.

Q. And as of December 31, 1920?

A. $356,339.

Q. And as of December 31, 1921?

A. $394,406.

Q. Have you made a computation—or, by the way, is the computation of unearned premium reserve truly and correctly made from your books and records according to the best of your knowledge and belief?

A. Yes, sir.

Q. The figures from which the calculations were so made were made under your supervision and direction, were they?

A. Yes, sir.

Q. Have you, on our request, made a calculation of earned premiums, incurred losses, and incurred expenses, as calculated from the figures that you have already given in your evidence to this point?

A. Yes, sir.

Q. I suppose to arrive at earned premiums, that is a calculation from the figures you have given rather than a figure that would be on your books, is it?

A. Yes, sir.

Q. And is the same true of incurred losses?

A. Yes, sir.

Q. Now, how did you arrive at the earned premiums for 1917?

A. Taking the amount of the unearned premiums at the beginning of the year, adding that to the Missouri written

[fol. 141] business during the year and deducting from that the unearned premium at the end of the year.

Q. Is that a proper and correct method of arriving at the earned premium?

A. It is, to the best of my knowledge.

Q. And how did you go at computing the incurred losses?

A. We took the total paid loss during the year, deducted from that the losses that are outstanding at the beginning of the year, and after that the losses that are outstanding at the end of the year.

Q. How did you arrive at incurred losses?

A. Taking expenses that were paid during the year, deducting the expenses that were outstanding at the beginning of the year, and adding the expenses outstanding at the end of the year.

Q. Have you made a calculation of the——

The Referee: Pardon me just a moment. Read the preceding question and answer, Mr. Lincoln.

(Which answer and question so referred to were by the reporter read.)

Mr. Folonie:

Q. Have you made a calculation of the profit or loss which your company made during the respective years, 1917 to 1921, inclusive, and for that entire term, upon the basis of incurred losses and incurred expenses to earned premiums?

A. Yes, sir.

Q. You may take it year by year and state the amounts and profit or loss, as computed therefrom, and your method of arriving at such figure?

A. Year, 1917; profit or loss; the loss was $63,527.

[fol. 142] Q. How did you arrive at that?

A. It is the difference between the earned premiums for that year and the losses and expenses.

Q. What was the amount of earned premiums for that year?

A. $249,401.

Q. And your incurred losses for that year?

A. $206,572.

Q. And your incurred expenses?

A. $107,356.

Q. And your incurred losses plus incurred expenses was how much?

A. $312,928.

Q. And the difference between that figure and your earned premiums was the amount of your loss for that year, wasn't it?

A. Yes, sir.

[fol. 143] Recross examination by Mr. Jacobs:

Q. Now, Mr. Toles, where is the main office of your company?

A. Liverpool, England.

Q. And the head office in the United States is in New York?

A. Yes, sir.

[fol. 144] Q. And the office for the fourteen states in this part of the country is, as you say, in Chicago?

A. Yes, sir.

Q. You have been in the State of Missouri how long?

A. I couldn't state that exactly. They have been doing business in the United States since 1851.

Q. I mean, in Missouri?

A. I presume we have been in Missouri all that time.

Q. Now, you have divided your insurance into fire and lightning in one class, and, generally speaking, in your testimony, tornado and windstorm in another; and other kinds of insurance as a third class. You have generalized on your third class. Now, what kind of insurance is included in this third class?

A. Automobile insurance, riot and civil commotion, explosion, and sprinkler leakage, which I think I didn't mention this morning.

Q. Now, what kind of automobile insurance do you write?

A. Insurance against fire, theft and transportation; collision, property damage.

Q. That covers practically the list of automobile insurance?

A. We don't write all kinds.

Q. You have ordinary property and damage collision?

A. Yes, sir.

Q. What kind do you not write?

A. Liability.

Q. Any besides that?

A. Not that I know of.

Q. All automobile insurance, practically, except liability?

A. Yes, sir.

Q. And the figures covering these various forms of automobile insurance are included in the figures you have testified to here?

A. Yes, sir.

[fol. 145] Q. With respect to profits and losses?

A. Yes, sir.

Q. Now, what kind of inspection does your company make in the State of Missouri before taking a risk?

A. That I couldn't tell you.

Q. Have you any information on it at all?

A. I have none.

Q. Do you know whether it makes an inspection of a property before it takes a risk?

A. I don't know that.

Q. Before it makes a valuation thereof?

A. That is handled by the Underwriting Department, and which I know nothing about.

Q. You testified to expenses of certain field supervisors. Do you know the duties of the field supervisor beyond what you have testified here, or are the duties that you suggested he had were the duties, were all the duties that he performed?

A. There may be others that I do not know of.

Q. You haven't learned of any others in your connection with the company?

A. No, sir.

Q. And you have been with the company a good many years?

A. Yes, sir.

Q. What organization do you belong to, or what is there that regulates the matter of commissions to agents?

A. That is a matter between the field manager of the company and the agent.

Q. Is there any board which fixes the commission rates to which the companies belong?

A. No, sir.

[fol. 146] Q. Is the amount of commission paid each agent a matter of contract between the field supervisor and the agent?

A. Yes, sir.

Q. There isn't any certain amount?

A. I don't think that there is.

Q. Is there any standard amount in the State of Missouri?

A. I don't know that I could answer that.

Q. Do I understand you to say, so far as you know, that the commissions paid each agent is the result of a private contract between that agent and the supervisor?

A. Yes, sir.

Q. Then I understand you to say, or do I, that the commissions vary among the varying agents?

A. No, I don't know that they do.

Q. Do you think that all the supervisors make uniform contracts with the agents?

A. You mean all supervisors?

Q. Yes.

A. I don't know that I can answer that.

Q. You don't know one way or the other about it?

A. No, sir.

Q. In your testimony this morning, in chief, didn't you speak of varying commissions which were paid?

A. I don't think that I did, no.

Q. You are sure of that? If you did, are you mistaken about it? By that, I mean, do you want the Commissioner to understand that you didn't intend to make a statement of that kind?

A. I don't think I made any such statement.

Q. Are you sure you didn't?

A. Yes, sir.

[fol. 147] Q. What I am getting at is, what do you say about it now?

A. What is your question?

Q. With reference to whether or not varying commissions paid to various agents.

A. There are.

Q. In the State of Missouri?

A. Yes, sir.

Q. By your company?

A. Yes, sir.

Q. That is what I have been asking you. Have those commissions been arranged by the field agents?

A. Yes, sir.

Q. Or do you belong to some kind of an organization that fixes them?

A. No, sir.

Q. Are these commissions the result of a private contract between the supervisor and the agents?

A. So far as I know.

Q. Do you know of any regulation which your company places upon the supervisor when he makes the contract with the agent?

A. In what way do you mean?

Q. With reference to the character of contract he makes with him?

A. Yes, sir.

Q. What is it?

A. This—different rates of commissions upon different kinds of business.

Q. Is there a standard commission?

A. There is supposed to be.

Q. That is what I asked you quite a while ago. There is a standard commission that is paid agents in the State of Missouri? Is that right?

A. Yes, sir.

Q. Now, upon any particular kind of business, did you have a standard commission, does that ever vary? Do they ever get away, in other words, from the standard commission?

A. You mean different parts of the state?

[fol. 148] Q. Yes.

A. Yes.

Q. What is the variance, if you know?

A. About five per cent.

Q. Not more than that?

A. Yes, sir.

Q. You are quite sure about that?

A. Yes, sir.

Q. No secret about that?

A. So far as I know.

Q. Have you examined into the matter? Have you looked over your books to determine that?

A. Yes, sir.

Q. And have you made a computation?

A. Yes, sir.

Q. Have you that computation with you?

A. No, sir.

Q. What did you do with it?

A. I don't know as I kept it.

Q. You didn't keep it?

A. Simply to verify my own impression.

Q. You say you simply made it to verify your own impression?

A. Yes, sir.

Q. When did you make this computation?

A. Since this case started.

Q. Within recent months?

A. Not very, no.

Q. What?

A. Not lately.

Q. Well, some time since this case began?

A. Yes, sir.

Q. And did you include that rate—make a showing anywhere in your tabulation about the varying commissions?

A. No, sir.

Q. What is the standard rate in the State of Missouri for fire insurance agents?

A. Fifteen, twenty and twenty-five per cent.

[fol. 149] Q. They vary from fifteen to twenty-five per cent?

A. Yes, sir.

Q. Then what is it that fixes this difference between agents in some places who receive fifteen per cent and agents in others who get twenty-five per cent? What is it that creates that difference?

Mr. Folonie: We object to the assumption that it is paid different agents. I think it is a different class of business.

The Referee: If that be true, the witness may explain.

A. A difference in commission between fifteen and twenty-five per cent; that is based on the different kinds of business.

Mr. Folonie:

Q. What kind of business?

A. I can't tell you that because that is an under-writing proposition which I have nothing to do with.

Mr. Jacobs:

Q. You don't know about the different commissions and the different commissions paid on the different classifications?

A. No, I don't know that.

Q. Is there any difference between the agents selling the same kind of insurance?

A. Yes, sir.

Q. In the State of Missouri?

A. Yes, sir.

Q. In the same town or different towns?

A. Different towns.

Q. Are there differences between agents in the same town?

A. No, sir.

Q. What is it that causes a difference in the amount of commissions paid in the same classification in different parts of the state or of the same town?

A. I don't know.

[fol. 150] Q. Where is the lowest commission paid in Missouri?

A. I couldn't tell you that.

Q. Where are the highest commissions paid?

A. I would say in St. Louis.

Q. What makes you think it is in St. Louis?

A. On account of the accounts that come from there.

Q. On account of the accounts, you say?

A. Yes, sir.

Q. What is the increase in the city of St. Louis over the balance of the state?

A. A little over five per cent.

Q. Not more?

A. No, sir.

Q. You say you have made that computation.

A. I got that from the accounts that come in from the agents.

Q. You made the computation that in St. Louis there is a five per cent increase in the agents' commissions over the other states?

A. It is not a question of computation. It is the way they report it in their accounts.

Q. You had to compare their commission with the commissions from other agents?

A. We had no particular reason in comparing them that way.

Q. How do you know that?

A. I know that from the way they were turned in.

Q. Well, how do you know it?

A. I have always known it.

Q. Do you know why there is a difference?

A. No.

Q. You have no knowledge of that?

A. No.

[fol. 151] Q. Is there some kind of a board of which your company is a part that fixes standard commissions?

A. Not that I know of.

Q. You never heard of such an organization?

A. No, sir.

Q. And is it a fact that most insurance companies in the State of Missouri—that the commissions are fixed by each company differently, independently?

A. No, I know nothing about the other companies.

Q. Haven't you learned whether or not commissions were fixed by all the companies on a standard basis?

A. No, sir.

Q. You never heard of that?

A. I may have heard of it, yes.

Q. But you don't know of it to your own knowledge?

A. No, sir.

Q. Don't you know, as a matter of fact, and in your connection with this company and another, that they pay the same?

A. They pay the same; yes, sir. It is the same management of two companies.

Q. I say, you have for other companies?

A. I know nothing about the other companies.

Q. You have two companies?

A. Yes.

Q. And they pay the same commissions?

A. Yes, sir.

Q. Those depend upon certain classifications?

A. Yes, sir.

Q. You don't know anything about the other companies?

A. No, sir.

[fol. 152] Q. Have you not in the course of your connection in the insurance business learned anything about the rate of commissions paid in the State of Missouri by other companies?

A. No, sir.

Q. Never have learned anything about it?

A. No, sir.

Q. Never have been interested in that phase of it?

A. No, sir.

Q. You don't know whether the same commissions are paid on standard classifications by all the companies or not?

A. No, sir.

Q. Never had any intimation concerning that matter?

A. No, sir.

Q. And never were interested in it?

A. No, sir.

Q. Has it been your understanding that the rates paid or the commissions paid by your company were fixed independently by your company without regard to the commissions paid by other companies?

A. Yes, sir.

Q. And you so understood it, and so understand it now?

A. Yes, sir.

Q. Have you ever had occasion during the preparation for this hearing to go over the books of any other company in conjunction with your tabulation?

A. No, sir.

Q. Or have you talked with any witnesses for other companies who made similar tabulations?

A. Yes, sir.

Q. And did you compare your commissions?

A. No, sir.

Q. Did not compare your tabulations?

A. I did not.

[fol. 153] Q. How did you come to be going over them?

A. I didn't go over the tabulations at all.

Q. I asked you if you had occasion to compare your tabulations with those made by other witnesses for other companies?

A. No reason to do that, no.

Q. You haven't done at all?

A. No, sir.

Q. You haven't discussed tabulations made by other witnesses?

A. I have discussed their methods at different times.

Q. Since this matter arose?

A. Yes, sir.

Q. Did you show them your tabulations?

A. No, sir.

Q. Did they show you theirs?

A. No, sir.

Q. Did you discuss it with them as to their methods?

A. Yes, sir.

Q. Did you differ upon the methods?

A. Yes, sir; sometimes.

Q. Say, for example, with reference to computing premiums on the losses and expenses.

A. You don't compute them. You have those in your records.

Q. You compute them as one against the other when you arrive at these percentages?

A. How do you mean?

Q. I mean, these percentages you testified to on losses or gains a little while ago.

A. There is no question of the method in that. That is the fixed and standard method.

Q. Who fixes that standard?

A. You can't figure it any other way.

[fol. 154] Q. You mean by that the method you used?

A. The method to get those percentages that were called there.

Q. You mean, the mere fact of determining your losses and expenses and comparing them with the premiums; that that is a fixed, standard method?

A. I would say so.

Q. Well, I didn't have reference to that, of course, but with reference to using the system of earned premiums as against incurred losses and expenses. Did you discuss this matter with the other witnesses?

A. No, sir.

Q. Had no conversation with them at all?

A. No, sir.

Q. Have you gone over your testimony with counsel for the plaintiffs?

A. Yes, sir.

Q. Have you been examined by them both before and after, with reference to this testimony?

A. Yes, sir.

Q. And cross examined?

A. Yes, sir.

Q. And prepared fully for this testimony?

A. Yes, sir.

Q. Now, do these figures which you testified to today for your tabulation compare and are in accord with the figures which appear upon your annual statement report on file in the office of the Superintendent of Insurance of Missouri?

A. Yes, sir.

Q. They are exactly like those?

A. Yes, sir.

Q. And the numbers are the same?

A. Yes, sir.

Q. As they appear here?

A. Yes, sir.

[fol. 155] Q. I understand you to say that these figures correspond in every respect insofar as there appears upon them any statement report?

A. Yes, sir.

Q. Both with reference to premiums collected and losses and expenses—premiums earned and losses and expenses incurred?

A. No, sir; premiums written.

Q. How about your method of premiums earned?

A. That is not a part of the annual statement.

Q. That doesn't appear upon the annual statement?

A. No, sir.

Q. And your losses don't appear on the annual statement as they appear upon your tabulations, do they?

A. No, sir.

Q. Because you use an entirely different method in reaching these losses than the figures would warrant upon the annual statement report in the office of Superintendent of Insurance of the State of Missouri?

A. Yes, sir.

Q. Mr. Toles, what is the difference between unearned premium reserve and unearned premium?

A. I don't know that I could tell you that.

Q. You don't know. Now, in reaching these figures you use the corresponding premium reserve. You don't know what the difference is between that and unearned premium?

A. No.

Q. Do you think the unearned premiums are greater or less than the unearned premium reserve?

A. I would say they are the same.

Q. And that is the position you take?

A. I think so.

[fol. 156] Q. And when you figure in these figures unearned premium reserve, you are using those figures as representing the unearned premium in the State of Missouri?

A. Yes, sir.

Q. As I understand your method, you exclude for the beginning of the 5-year period the unearned premiums or unearned premium reserve, as you call it, and include it at the end of the term?

A. No, you have reversed that.

Q. You include it at the beginning and exclude it at the end?

A. Yes, sir.

Q. What is the effect on the face of the unearned premium or unearned premium reserve by an ascending state of business?

A. Well, I would say that would depend entirely upon the term of this increased business.

Q. Well, over a 5 year period, an experience over a 5 year period, what would be the effect of an ascending state of business?

A. It would increase it, I would say.

Q. It would increase it?

A. I think so.

Q. Now, when you include, then, the unearned premium or premium reserve at the beginning, and exclude it at the end, if there is an ascending conduct of business, why the apparent profits are cut or reduced, aren't they?

A. If your unearned premium increases, your earned premium would be less.

Q. And your profits would be reduced?

A. Yes, sir.

Q. Is that the reason you use that method in establishing an experience of five years for the purpose of arriving at a rate?

A. Arriving at a rate of what?

[fol. 157] Q. Arriving at the justice of a rate with reference to profit or loss?

A. I would say so.

Q. Now, on the question of incurred losses and incurred expenses, what is the situation? In arriving at profit and loss, how did you handle that matter over a period of five years? What do you do at the beginning with the incurred losses?

A. In what way do you mean?

Q. In 1917, do you include the incurred losses and incurred expenses?

A. In figuring the profit?

Q. Yes.

A. Yes.

Q. And at the end exclude them?

A. No. Figuring your incurred losses, you deduct your outstanding at the beginning of the year to get your incurred losses.

Q. At the beginning of a term of five years?

A. You take that by itself.

Q. Now, you are figuring a 5 year period. What do you do at the beginning with reference to incurred losses?

A. Well, your incurred losses for the five years——

Q. (Interrupting.) No. Now, you are starting out in 1917.

A. Yes, sir.

Q. Well, you had some incurred losses that they turned over from 1916.

A. Can't have any incurred losses turned over; outstanding losses. Use it calculating your incurred losses for the year 1917.

Q. Now, what are outstanding losses—January, 1917?

A. Losses that occurred prior to that time.

Q. And which had not yet been paid?

A. Yes.

[fol. 158] Q. Now, what do you do with them?

A. Well, in calculating your incurred losses you take

your paid losses for a year. You deduct the losses outstanding at the beginning of the year and those you had at the end of the year; same operation would apply on a 5-year period.

Q. You deducted them at the first of the year—that is, your outstanding loss?

A. Yes, sir.

Q. And you add them at the end of the year?

A. To what you have at the end of the year.

Q. And at the end of five years you add the outstanding losses?

A. Yes, sir.

Q. When you calculate this matter upon a basis of incurred losses?

A. Yes.

Q. But if the losses are great, in accordance with a greatly increased volume of business, then it is to the advantage of the company that they should be added at the end of the term? And excluded at the first?

A. You can't figure them any other way?

Q. Well, that is the way you figure them, isn't it?

A. Yes.

Q. And that is your reason for figuring them that way, isn't it?

A. What?

Q. I say, that is your reason for figuring them that way, isn't it?

A. Not the reason you just gave, no, sir.

Q. What is your reason for figuring them that way?

A. Because that is the only way to arrive at the correct amount of incurred losses.

[fol. 159] Q. You have selected a method by which you calculate them upon incurred losses?

A. I explained to you what the incurred losses are.

Q. And you selected a method of basing your calculations upon incurred losses instead of the other system of actually paid losses, didn't you?

A. Yes, sir.

Q. And I ask you if it is not a fact that it is to the advantage of the company in figuring them to—in figuring for a rate that it should be based upon calculations of incurred losses to the end that the greatly enhanced loss that might

come with a greatly increased business would be added at the end of the term and excluded in a smaller degree at the first of the term.

Mr. Hogsett: That is argumentative.

Mr. Jacobs:

Q. That is your reason?

A. I dont think there is anything to that argument at all. I don't see what there is to the question.

Q. Well, do you understand the question?

A. I do not, no, sir.

Q. You said, didn't you, that you excluded the so-called incurred losses at the beginning of the year?

A. Excluded them, no, sir.

Q. The outstanding indebtedness?

A. Yes.

Q. And at the end of the year included them?

A. Yes.

Q. And at the end of the 5-year period you included them?

A. Yes.

Q. Now, how about expenses?

The Referee: Q. Do you distinguish between incurred losses and unpaid losses, or do you use those phrases synonymously?

[fol. 160] A. Well, incurred losses are both paid and outstanding.

The Referee: Q. And unpaid losses are what?

A. Outstanding losses. Incurred losses are the losses incurred during certain periods whether paid or not.

Mr. Jacobs:

Q. Do I understand in figuring a year—you don't figure the losses paid that year, but all the losses incurred, whether paid or not paid?

A. Yes.

Q. And at the end of the year you include in your year's expense all outstanding losses? In other words, the unpaid losses?

A. Yes.

Q. That is what I thought. Now, with reference to the expenses, what happens? How do you handle the expenses?

A. Well, I estimate what our expenses are that haven't been paid, such as taxes and things of that kind.

Q. What do you call incurred expenses?

A. The paid expenses plus those outstanding at the end of the year, as well as those that were outstanding at the beginning of the year.

Q. You don't, in figuring expenses of the year, figure the paid expenses alone, do you?

Mr. Hogsett: For what purpose?

Mr. Jacobs:

Q. In figuring the expenses for the year, do you, on any occasion? Figuring the experience of a year, have you a different way for figuring this particular matter or any other matter?

A. This method right there that you were speaking of. [fol. 161] Q. You don't figure expenses paid alone, in figuring expenses for the year?

A. Incurred expenses.

Q. That is all of them?

A. Yes.

Q. Whether they have been paid or not?

A. Yes.

Q. You charge them against that business that year?

A. Yes.

Q. Now, what do you do at the beginning of the year, say, January, 1917? Do you include or exclude the outstanding expenses?

A. You mean, after figuring your expenses for '17, and subsequent periods?

Q. Figuring your expenses for a year?

A. Exclude those.

Q. And at the end of the year you include them, don't you?

A. Yes.

Q. And so on through the experience of the five years?

A. Yes.

Q. And at the end you include the incurred expenses, no matter what they may be?

A. You included the outstanding expenses and not the incurred expenses.

Q. You will include all the incurred expenses, won't you?

A. No, sir. What is outstanding.

Q. There will be included what you paid out?

A. Yes.

Q. And outstanding expenses?

A. Yes.

Q. So you have included them both, haven't you?

A. No, sir. You have taken out the expenses you had at the first of the year each time.

Q. But I mean for the last year; 5-year experience. There are certain expenses paid that year?

A. Yes.

Q. Those are charged expenses?

A. Yes.

[fol. 162] Q. And at the end of that year, which is the last year of the 5-year experience, you also include the 5-year—you include the outstanding expense?

A. Yes, but you have also taken out what you had at the beginning of that year.

Q. Yes, but that was charged in the preceding year?

A. Yes.

Q. And back on the next year and runs back to January, 1917, isn't that right?

A. They haven't been included twice for one period.

Q. I understand, but it runs back and taken care of each year until you get back to January, 1917?

A. Yes.

Q. But you exclude the outstanding indebtedness or expense, I mean, at that time?

A. Yes.

Q. But when you include on an ascending rate of business at the end of the 5-year experience you are charging a proportionately greater expense than you excluded at the first of the term, don't you?

A. Possibly.

Q. Now, the reason for figuring these matters in this fashion and adopting the earned premium as against the incurred loss and expense system is that it diminishes apparently at the end of a 5-year experience the profits or earnings of the company doesn't it?

A. Not necessarily.

Q. Well, don't you think it does, as a practical matter, during the past five years, running up through 1921?

A. Yes.

Q. It has?

A. Yes.

[fol. 163] Q. The practical effect of it has been that, hasn't it?

A. Yes.

Q. Do you know the difference between your figures, we are talking about the percentages now, because I don't care to go into the various figures at the present time—do you know the difference of the percentages? Have you figured paid premiums and paid losses and expenses?

A. No, sir.

Q. You haven't figured that?

A. I have figured that, but I couldn't tell you what the differences are.

Q. When you figured on that basis over the 5-year experience from January, 1917, through '21, when did you make those calculations, upon that basis, the paid basis, we will call it?

A. At the time I made these.

Q. Now, did you return a copy of your computations?

A. I presume I could find it.

Q. Have you got it there with you?

A. No.

Q. Did you show that to the counsel of the company?

A. Yes.

Q. And to the representatives?

A. Yes.

Q. And discussed it with them?

A. Yes.

Q. But you have no recollection of the differences and percentages?

A. I couldn't tell you how much that amounted to, no, sir.

Q. No recollection whatever at this moment?

A. Not the exact amount, no, sir.

Q. Could you, in figuring the expense of the last five years, figure any earnings beyond strictly underwriting earnings or losses—whatever it might be—you seem to have losses mostly?

A. No, sir.

[fol. 164] Q. When you say you lost sixty-four per cent—I believe 63.7 per cent, to be exact?

A. All right. I forget what it was.

Q. But you figured nothing in arriving at these conclusions you have given the Commissioner except the underwriting expense?

A. That is all.

Q. Are you in position now to give to the court the percentages including your investment and earnings?

A. No, sir.

Q. Did you make any calculation of your investment earnings?

A. No, sir.

Q. And allocate any of them to the State of Missouri?

A. No, sir.

Q. Did you make any calculation of your earnings upon unearned premiums?

A. No, sir.

Q. And allocate a part of it to Missouri?

A. No, sir.

Q. Were you asked to?

A. No, sir.

Q. No suggestion was made that you figure the investment earnings or earnings on unearned premium or unearned premium reserve?

A. No, sir.

Q. Do you include in your—and what we call your annual statement report to the Superintendent—in the office of the Superintendent of Insurance anything about the earnings upon investments?

A. Not in the annual statement, no, sir.

Q. Or any of the other—either of the other two statements which you make to that department?

A. Yes, sir.

[fol. 165] Q. What department—or what report do you make to that department?

A. The annual report.

Q. The annual statement report?

A. Tax statement report and the underwriting exhibit, I believe you call it.

Q. In which one of these three did you calculate any investment earnings of any kind?

A. The underwriting exhibit

Q. Why did you include that in the underwriting exhibit?

A. Because they were asked for.

Q. By whom?

A. The State of Missouri.

Q. Is this report made upon a demand or a request of the State of Missouri?

A. Yes, sir.

Q. Or upon a uniform standard blank used over the country generally?

A. By the State of Missouri.

Q. Alone?

A. Yes.

Q. How is that?

A. There are other states.

Q. Other states to which you make reports of your investment earnings? And when I say investment earnings, I mean earnings on unearned premiums as well as other investment earnings—to make it short, that is what I mean by that statement. I mean them all. Now, what other states, if you know, require you to make a report on your investment earnings?

A. You mean the same method they have in Missouri?

Q. Well, I don't care whether it is exactly the same method, but in your report to the state you make a report on your invesment earnings?

A. I think there are other states.

[fol. 166] Q. Do you recall which states there are or how many there are?

A. Kansas is one.

Q. Do you recall any more?

A. Indiana.

Q. Any more?

A. Not unless it is Minnesota. I am not so sure about that.

Q. You don't recall any others?

A. No, sir.

Q. What else is included in the underwriting report that you spoke of besides a report on the investment earnings?

A. The expenses.

Q. What else? That is the expenses of what?

A. Expenses paid in Missouri.

Q. Any other expenses?

A. I don't think so. The allocated expenses which the blank calls for; socalled overhead expense.

Q. There are then, perhaps, allocated expenses and expenses directly used in Missouri?

A. Yes.

Q. And what else?

A. That is all.

Q. Besides investment earnings? Any reference in that report to premiums?

A. Yes, sir.

Q. Then you make a list in your report of the premiums?

A. Yes, sir, premiums and losses.

Q. And of the losses. So there is one report which you make in the office of the Superintendent of Insurance covering premiums and losses and expenses, and expenses which have been proportioned to the state from other states, and earnings upon investment?

A. Yes, sir.

Q. Are these expenses which are reported incurred expenses in this report or actually paid expenses during the year?

A. Those are paid expenses.

[fol. 167] Q. And how about the losses?

A. Incurred losses. I believe that one year of your form asked for paid losses.

Q. You mean, during this 5 year period?

A. Yes.

Q. Which one, do you remember?

A. No, I do not.

Q. Do I understand you to say that the report differs through those five years and in some there appear incurred losses and in others paid losses?

A. I think that is right.

Q. And how about your premiums, *does* the total collection of premiums recorded there or just the earned premiums?

A. Total written premiums.

Q. Total written premium?

A. Yes, sir.

Q. Now, in making your calculations here, of course you disregarded the total written premiums and based your calculations entirely on earned premiums through this experience of five years?

A. That is right.

Q. Do you know whether or not there was a varying rate in Missouri during that five years?

A. I know nothing about it.

Q. Didn't you figure—make all these computations?

A. Varying rates of what?

Q. For fire insurance?

A. That is something I have nothing to do with.

Q. Did you or did you not know that the rates had been increased by an offer of the Superintendent of Insurance in January, 1920 some fifteen per cent?

A. I did not.

[fol. 168] The Witness: Any computations I would make would be made upon the premiums and have nothing to do with the rates.

Mr. Jacobs:

Q. If you were to figure the possible, probable profit or loss of an ensuing five years, and there was a varying rate within the five years upon which you—the five past years upon which you were figuring, would that varying rate affect your calculations?

A. No, sir, I pay no attention to the rates.

Q. You mean, on arriving at the actual result of the 5 year experience?

A. Yes, sir.

Q. And if the rate for the last year of the 5-year experience was fifteen per cent greater than it had been for the preceding—for the other four years, the preceding four years, would you figure that a calculation which should not take into consideration the increased rate which truthfully reflect the proper—the probable condition of the next five years?

Mr. Folonie: Object to that as speculative, upon the ground it abandons the proper predicate of what the ex-

perience has in fact been during the 5-year period in question.

The Referee: Overruled.

(To which action and ruling of the referee the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs: Now, will you read the question?

Mr. Saunders: There will be an objection to all this line of present testimony, and so understood?

The Referee: Yes.

[fol. 169] Q. You didn't know that?

A. No, sir.

Q. Now, in arriving at a 5-year experience, Mr. Toles, would that fact affect you in making your computations as an expert accountant?

A. No, sir.

Q. It would not affect you to arrive at the actual profit or loss for that period, would it?

A. No, sir.

Q. But would it affect you if you were figuring the next 5-year experience?

A. You mean the rate of insurance?

Q. Yes.

A. That is something I would never have anything to do with.

Q. Well, you qualified as an accountant and head of the accounting department of this company?

A. Yes, sir.

Q. Would you, in arriving at a future experience, be affected by a changing rate in making those computations for a 5-year experience?

Mr. Hogsett: Object to the question, for the reason the issue here is what was the expense, based on what was the actual experience of the company during the 5-year period.

The Referee: Overruled.

(To which action and ruling of the referee the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Go ahead. Do you remember the question?
A. No.

Mr. Jacobs: Read the question.

(Question read by the reporter.)

[fol. 170] Mr. Folonie: In other words, to make it a little more specific, it is our contention that any speculations as to what may result in the future are not to be indulged in, but that is to be gauged entirely by reference to what has occurred during the 5-year period antecedent to the date of the order in question, and that speculations as to the results are not to be indulged except as they are to be drawn from the figures as they exist. I think with that statement that it may be understood that we are objecting to what the effect of this data or the other will be in the future, in anybody's opinion.

Mr. Saunders: Let me suggest the statutory standard of five years is the only standard upon which the order can be based.

The Referee: I understand a controversy exists between counsel here as to correct interpretation of the law. Counsel for plaintiffs contend that the hearing is confined exclusively to the experience of the designated five years, to wit, 1917 to 1921, inclusive. I understand further that the counsel for the Commissioner of Insurance of Missouri contend that they have a right to apply in this hearing the information—such information as may be obtained with respect to the effect of the entries of ten per cent granted in the years stated, and the succeeding years, and from that basis to what would be a reasonable rate. My ruling in this matter is not governed entirely by my own interpretation of the statute now for two reasons; one, because I have not been favored with the benefit of counsel's study of the statute or any argument upon the matter. The other is [fol. 171] that the referee is not a court of final resort and consequently, as stated earlier in this hearing, much evidence will be admitted which, if I followed my own judgment exclusively, might not be admitted. Objection overruled.

(To which ruling and action of the referee the plaintiffs' by counsel, then and there at the time duly excepted and still except.)

Mr. Folonie: We save exception of course to the modest statement by the referee of his reasons.

The Referee: Will you read the question, Mr. Blume, please?

(Question read by the reporter.)

A. I would never be called upon to make such calculations; not in my line of work.

Mr. Jacobs:

Q. Is that the only answer you could make to that?

A. I think that is sufficient.

Q. If you did business and reached certain conclusions with reference to profit or loss over a period of three and a half or four and a half years, and then the rate went up fifteen per cent, don't you think that that would result in greater profit in the ensuing five years than would show during the period when the rate of less than fifteen per cent had been in vogue?

A. Theoretically, yes.

Mr. Hogsett: We make the same objection to that and the additional objection that it presupposes an identical volume, and therefore is entirely speculative.

The Referee: Overruled.

(To which ruling and action of the referee the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

[fol. 172] Mr. Jacobs:

Q. You say "theoretically yes."

A. Yes.

Q. Now, Mr. Toles, you charge your expenses against the State of Missouri, some as direct expenses and some as allocated expenses?

A. Yes, sir.

Q. In proportion to the volume of business done?

A. Yes.

Q. Between it and the other states?

A. Yes.

Q. Is there any separation in your departments with reference to the underwriting and your investment departments?

A. Yes, sir.

Q. Here in Chicago?

A. We don't have any of the investments in Chicago.

Q. Have you ever worked in the New York office?

A. No, sir.

Q. Have you ever been connected with the New York office excepting insofar as you are chief accountant of this office?

A. No, sir.

Q. You say there is separation there?

A. I believe there is, yes, sir.

Q. Do you know that as a fact?

A. No, sir.

Q. Then you don't know anything about that one way or the other?

A. No, sir, I do not.

Q. As far as you know, expenses may cover all their operations?

A. Yes, sir.

Q. And if that is true you are allocating to the State of Missouri expenses of investment operations, don't you?

A. Yes, sir.

Q. And as far as you know, that is what you have done?

A. Yes, sir.

[fol. 173] Q. In this instance. But you haven't allowed any credit to Missouri for your investment earnings of any kind?

A. No, sir.

Q. With reference to ceded and assumed re-insurance. What is the method pursued in handling assumed insurance? Of course, assumed insurance always means that there is ceded insurance, doesn't it?

A. Yes, sir.

Q. If there is one there is the other?

A. Yes, sir.

Q. Sometimes you do business along that line of re-in-

surance with admitted companies and sometimes you do it with companies that are not admitted?

A. Yes, sir.

Q. Now, what is the method you use with reference to reinsurance? How do you handle that?

A. What way do you mean?

Q. Well, if you take a policy of a million dollars, and you want to cede it, what do you do? You collect the premium first, don't you?

A. Not always.

Q. You either collect it or a note in place of it or something of that kind, don't you?

A. No, sir.

Q. How is that?

A. No, sir, not necessarily collected.

Q. Well, would you issue a policy for a million dollars without having the premium?

A. Yes, sir.

Q. In other words, you do to that extent a credit business?

A. Yes, sir.

Q. Did you ever do a credit business to the extent that a loss occurred and the premium was paid after the loss occurred?

A. Yes, sir.

[fol. 174] Q. That happens?

A. Yes, sir, very often.

Q. And who carries that premium, the company or the agent?

A. How do you mean?

Q. Does the agent remit or does the company carry the credit?

A. You mean in a case of a loss of that kind?

Q. No, I mean wherever you sell insurance on credit. When an agent sells a policy for insurance for which he does not at once receive the premium. Say it is done on a basis of ninety days credit or even indefinite credit, does the agent remit to the company or does the company carry that credit?

A. I don't know that I just understand how you mean that.

Q. Do you require the agent to remit to the company whenever you issue a policy?

A. No, sir, the agent remits——

Q. (Interrupting.) How long?

A. Thirty and sixty and sometimes longer, days.

Q. There isn't any definite limitation upon it?

A. No.

Q. The purpose of credit is simply a good deal—a method of business arising out of, perhaps, competition between companies to secure business?

A. Yes, sir.

Q. And you say that it is carried to an extent where sometimes a loss transpires before the premium is paid?

A. Yes.

Q. And then the premium is paid and the company pays the loss?

A. Yes.

Q. What I ask you is this: When an agent sells a policy, does he have to remit his own money to cover that policy [fol. 175] to the company?

A. That I don't know. Sometimes he does not. If he has not collected the premium from the assured.

Q. What does he do?

A. Sometimes he remits it to us from his own funds.

Q. That is, before—out of his own personal funds?

A. Yes.

Q. To that extent it is not a credit business, but it has been paid for?

A. Yes.

Q. Have you any fixed method of doing business in that line?

A. The agent who writes the business reports to us daily the policies he writes. At the end of the month he furnishes us with a statement covering the policies that he has written during the month; at stated intervals, thirty or sixty days, he sends us a check on remittance, or remits it in some way, the balance due on those accounts. The amount of the premiums less the commissions due him; without any reference to whether he has collected the premiums or not, as far as we know. He may have collected them and may not. We don't know.

Q. Well, does it ever occur that you don't get your remittances for more than thirty days?

A. Sometimes.

Q. Sometimes it is sixty?

A. Yes.

Q. And sometimes more?

A. Yes.

Q. But in the meantime you issue the policy? And it becomes an obligation upon your company?

A. Yes, sir.

[fol. 176] Q. Well, now, if you take this policy, of say, a million dollars, or some large sum, if you don't want to carry it yourself you cede it some of that insurance to other companies?

A. Yes, sir.

Q. And they in turn assume it?

A. Yes, sir.

Q. Now, what do you do with reference to the commission and expenses? You have collected, or presumably you have collected the premium?

A. Yes, sir, the premium—that proportion of the premium covering the amount ceded to the other company is paid to the other company less the commission allowed them.

Q. That is, if the other company takes $100,000 of the policy it is entitled to one-tenth of the premium?

A. Yes, sir.

Q. And so on?

A. Yes.

Q. What is done with reference to the commission of the original agent who sold that million-dollar policy, does he get the full commission?

A. Yes, sir.

Q. Are any commissions made to the company which assumes the policy or to any agents or to representatives of the company which assumes part of the policy?

A. The company that assumes the policy pays commission to the company ceding it, then.

Q. And what proportion of it?

A. What proportion?

Q. Yes. If they take $100,000 out of a million, what do they pay to the company which cedes the insurance?

A. They pay the rate of commission agreed upon between the companies.

[fol. 177] Q. And that is not fixed by the amount which the agent gets?

A. No, sir.

Mr. Folonie: The direct-writing agent, you mean?

Mr. Jacobs: Yes.

Q. He is given a commission for selling this insurance?

A. Yes.

Q. And then there is another commission paid to the ceding company?

A. No.

Q. What were you talking about just now?

A. Commission paid to the ceding company.

Q. To the ceding company?

A. Yes, sir.

Q. And then there is the added expense of the company which assumes a part of the insurance, that is, the added overhead of transacting and handling that business—that is one of the results of re-insurance, isn't it?

A. You mean that expense is added?

Q. Yes, there is the added expense of carrying on that business in that office?

A. Yes.

Q. And then you cede probably to other companies a large policy?

A. Yes.

Q. Perhaps might be half a dozen or a dozen companies involved?

A. Yes.

Q. And that is repeated in every instance?

A. Yes.

Q. And there is an added expense in each instance—wherever there is a ceded policy of insurance?

A. Yes.

Q. Now, this works pretty well around in a circle unless you do business with a company—an own-admitted company, isn't that a fact?

A. Yes.

[fol. 178] Q. And if you do that there appears upon your report an expense and there appears upon your report a

commission paid to the original selling agent and there appears upon your report a commission paid between the companies and the overhead in handling the business, but any other credit that might come if that was an admitted company, are not bound by any other report if it is sold to an outside company, is it?

A. No, sir.

Mr. Folonie: I will object to that question for want of clarity in mentioning the reports. I am not certain, and I don't know which report he is talking about.

Mr. Jacobs: The witness has already answered the question. He knows.

The Referee: The witness has answered the question. If at any time he doesn't understand, of course he can call for a more definite question and if it needs more clarification after that it can be done on cross examination. Objection overruled.

(To which action and ruling of the referee the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

Mr. Folonie: Evidently I did not talk fast enough that time, I guess.

Mr. Jacobs:

Q. It is a fact, Mr. Toles, that commissions and expenses are pyramided in re-insurance and particularly if there is a ceding of insurance to an unadmitted company, that's a fact, isn't it?

A. I don't know just what you mean by that.

[fol. 179] Q. Well, if you double the commission it is a pyramiding?

A. Take a definite case like our own company, for instance.

Q. Well, in the event you have additional commission over and above your original selling commission, that is pyramiding expense?

A. That commission comes to us; we are not paying that out.

Q. And then you have that additional expense of overhead operation?

A. Whatever expense of handling it, yes, but there is sufficient amount of commission coming back to you from the company that assumes your business to take up that overhead expense—theoretically.

Q. The assuming company not only pays you a commission but is under expense in handling the business?

A. The expense of the other company has nothing to do with us.

Q. No, but it is one of the expenses of re-insurance, isn't it?

A. But if we re-insured our business with the companies we would reduce our expense by the amount of commission we would get back from them.

Q. You don't reduce them, your overhead expense at all, do you? It doesn't cost you any more from the standpoint of overhead expense to handle big policies than small ones?

A. No, but if the commissions are paid to us by the re-insuring company you are going to reduce your expenses that much.

Q. But that never happens?

A. Oh, yes, it does.

Q. You mean to say you would get on a $100,000 ceded policy more commission from the assuming company than [fol. 180] had been paid to the original selling agent?

A. Yes, sir.

Q. That the original selling agent who sold a million-dollar policy would receive less from your company than the assuming company?

A. I said in proportion.

Q. I asked you, as a matter of fact, if that is what happened. Are you speaking proportionately or as a matter of absolute fact?

A. Proportionately.

Q. Then overhead expense appears again in the course—in reports of admitted companies, doesn't it—that is, assuming companies?

A. I presume so.

Q. In other words, you have your overhead expense for the handling of the policy, in any event, haven't you?

A. Yes.

Q. And then the companies that handle it, they have an overhead expense in handling what is assumed by them?

A. Presumably.

Q. As a matter of fact, that is true, isn't it, and bound to be true, isn't it?

A. I presume so.

Q. One of the costs of doing business?

A. Yes.

Q. And all of that additional overhead appears in the reports of those companies?

A. I presume it does.

Q. If there is a correct report of their books it has to appear?

A. Yes, sir.

Q. These books that you examined, all of them are books which relate to the country generally and to the various states in which you do business, don't they?

A. Yes, sir.

[fol. 181] Q. There are no books in existence relating to Missouri alone?

A. I wouldn't say that.

Q. With your company? What books have you that relate to the business of Missouri alone?

A. Well, we have what we call an agency record covering the State of Missouri, showing the premiums.

Q. What does that agency record show?

A. Premiums and losses of each agency.

Q. And expenses?

A. No, sir.

Q. Doesn't show the expenses?

A No, sir.

Q. That are actual expenses in Missouri?

A. No, sir.

Q. Nothing but the leases?

A. And premiums and losses.

Q. But outside of that the books cover the country generally?

A. Yes.

Q. From which you make your tabulation?

A. Yes, sir.

Q. Now, will you tell the referee what expenses you allocated to Missouri? You testified that you have charged them with all the expenses that were actually paid in Missouri?

A. Yes.

Q. And then you allocated certain proportionate expenses to them?

A. Yes, sir.

Q. What were they?

A. Home office salaries and expenses.

Q. All right. Wait a minute right there. Home office salaries and expenses. Does that mean Chicago or New York?

A. That means all the salaries, home office salaries and expenses that are included in the annual statement, covering the United States.

[fol. 182] Q. Oh, does that cover the United States?

A. Yes, sir.

Q. Does that include any salaries paid at the home office in Liverpool?

Q. None excepting salaries and expenses made in the

A. No, sir.

United States?

A. That is all.

Q. You are sure of that fact?

A. Yes.

Q. Now, then, in New York—that means salaries that are paid there?

A. Yes, sir.

Q. And salaries that are paid in Chicago?

A. Yes, sir.

Q. And any other branch headquarters which you may have which does business over a section of the country?

A. Yes, sir.

Q. What does the president of this company receive?

A. I don't know, sir.

Q. You don't know?

A. No.

Q. How is that?

A. I don't know.

Q. You don't know his salary annually?

A. I do not.

Q. How many vice-presidents are there of the company?

A. I don't know.

Q. And you have no motion of either what they receive or how many there are of them?

A. I do not.

Q. Are you in a position to give the court a detailed statement of the expenses—the home office expenses of this company?

A. I am not.

Q. The only thing you can give this court is a gross amount?

A. That is all, yes, sir.

[fol. 183] Q. And you can't even give him that, can you?

A. I am not—only from the annual statement.

Q. All you can give him is your estimate of what ought to be charged against the State of Missouri on that basis?

A. That is all.

Q. And you are not in a position to either give him what the total home office salaries and expenses were or the details and the itemized information concerning it?

A. No, sir.

Q. You don't know anything about that?

A. I do not.

Q. You didn't make any investigation of it?

A. No, sir.

Q. Did you think there would be any inquiry and that this commissioner or referee might be interested in knowing the items of expense?

A. No, sir.

Mr. Hogsett: I remind you that in the opening statement it was stated on behalf of the plaintiffs that it would be probably necessary to take the testimony of a witness at the home office to prove that identical fact, and the man in Chicago would not know that.

Mr. Jacobs: Well, I didn't remember that.

Q. But you at least have no information concerning that?

A. No, sir.

Q. Were you instructed by counsel to get that information in arriving at your tabulations?

A. No, sir.

Q. How did you get your total home office expense?

A. From the annual statement.

Q. What annual statement?

A. Statement filed with your department.

[fol. 184] Q. Who got that out?

A. New York department.

Q. You don't know anything about the accuracy of that, then?

A. No, sir.

Q. How is that?

A. No, sir.

Q. The fact of the matter is that you have based your whole calculation of expense upon records which were not kept in your department or kept under your supervision or even in the City of Chicago, with reference to expenses, is that right?

Mr. Folonie: We object to that as misleading in that it fails to make any distinction between the home office portion of the expenses and the direct expenses—apportioned expenses and direct expenses.

Mr. Jacobs: I am talking about at this moment allocated expenses. I am going to ask you about direct expenses in Missouri in a little while. I want to know about the allocated expenses that you say were charged against the State of Missouri, as being its proportionate share of the home office salaries and expenses.

Q. Now, you don't know anything about that personally?

A. No, sir.

Q. You don't know whether these figures with reference to those expenses are correct or not?

A. I do not.

Q. All that you know is that you took them from a report that you think, as far as you have been able to learn, is prepared in the City of New York?

A. Yes, sir.

Q. By somebody else?

A. Yes, sir.

[fol. 185] Q. Do you know who prepared them?

A. I do not.

Q. Now, with reference to the direct expenses paid in the State of Missouri, what were your sources of information?

A. The accounts and records in the office.

Q. What office?

A. Our office.

Q. In Chicago?

A. Yes, sir.

Q. Now, you have records in your office upon direct expenses?

A. Yes, sir.

Q. Where did you get them?

A. From various sources.

Q. What sources?

A. Well, what are the particular sources.

Q. Well, you have various items there. You have field supervisors and you have agents and others.

A. Our losses, adjustment expenses, are taken from the loss records that show the expenses of adjusting each loss.

Q. And they were prepared, as you testified, I believe, this morning?

A. Yes.

Q. Those are those losses shown?

A. Yes. Agents' compensation taken from the agents' reports that came to the office.

Q. Which he makes every thirty days?

A. Yes; and audited at that time. Field men's expenses taken from the monthly accounts which they furnish to us every month.

Q. And they are audited?

A. Yes.

Q. Those direct expenses you have reasonable certainty about?

A. Yes.

[fol. 186] Q. Because you say you got them from your home office?

A. Yes.

Q. And secured them in the fashion you have testified to?

A. Yes.

Q. But you don't pretend to testify at all about the correctness of the expenses apportioned to the State of Missouri?

A. No, sir.

Q. Do you know anything about the method of your company with reference to the inspection of risks?

A. No, sir.

Q. Do you know whether or not your company inspects properties either real or personal—I mean, with respect to value before issuing a policy upon them?

A. I do not.

Q. Have you ever heard that discussed in the meetings of your directors or the officials of your company?

A. No, sir.

Q. You don't know a thing in the world about that?

A. No, sir.

Q. You don't know whether they inspect property or not?

A. I do not.

Q. How long have you been with this company?

A. About fifteen years.

Q. Have no notion of a fundamental character of that kind?

A. No, sir.

Q. Now, I think I heard you say something this morning that I want to ask you about. You said that you were making a report upon your tabulation of premiums and minus — of premiums received minus return premiums.

A. Yes, sir.

[fol. 187] Q. Did you testify? Did I understand you correctly to say this morning that the annual statement reports in Missouri do not contain a record of the return premiums?

A. No, sir; I did not say that.

Q. I misunderstood you on that?

A. Yes, sir.

Q. As a matter of fact, they do, do they?

A. Yes, sir.

Q. And they show what would have testified to here this morning with reference to return premiums?

A. Yes, sir.

Q. I probably misunderstood you about that, because I thought you said that. Now, on the automobile insurance, which you have included in your tabulation. Is there a rate fixed by the Missouri Inspection Bureau of Missouri, fixing the automobile rate — rates for automobile insurance?

A. I don't know.

Q. Do you know whether the Superintendent of Insurance of the State of Missouri has regulated automobile insurance rates in the State of Missouri?

A. I do not.

Q. Do you know the proportion of losses to premiums paid on collisions, automobile insurance?

A. No, sir.

Q. Have you ever looked into it?
A. No, sir.
Q. Investigated it in any way?
A. No, sir.
Q. I notice you have made certain tabulations based upon percentages generally. Have you itemized these various transactions and investigated that matter?
A. No, sir.
[fol. 188] Q. And you don't know what the percentage on automobile collision insurance is?
A. No, sir.
Q. Don't you know as a matter of fact that it is very high?
A. I do not know that.

The Referee: You mean the percentage of loss?

Mr. Jacobs: The percentage of loss on automobile collision insurance. But in figuring—making these computations which you testified to, you took into consideration all forms of automobile insurance, liability insurance?
A. Yes, sir.

The Referee: We will adjourn at five o'clock, gentlemen, unless there is some reason to the contrary.
We stand adjourned until ten o'clock tomorrow morning.

(Whereupon an adjournment was taken until 10:00 o'clock A. M. the following morning, being Thursday, June 7, 1923, at which time the parties reconvened, and the following proceedings were had:)

(The hour of 10:00 a. m., Thursday, June 7, 1923, having arrived, the parties reconvened at the Auditorium Room, Insurance Exchange, Chicago, Illinois, and the following proceedings were had:)

O. G. Toles, recalled to the stand for further cross-examination on behalf of the defendants, having been previously sworn, was further examined and testified as follows:

Cross-examination (cont'd) by Mr. Jacobs:

Q. Now, Mr. Toles, as I recall your testimony yesterday [fol. 189] you had an average loss on underwriting expense

for the five years, inclusive, that we were considering for the Royal Insurance Company in Missouri of about twenty-six per cent, roughly now—may have been a little different one way or the other, but it was about twenty-six per cent?

A. Yes.

Q. Now, in figuring that 5-year experience, first, you limited yourself entirely to underwriting expenses, did you?

A. Underwriting expense.

Mr. Folonie: Underwriting profit or loss.

The Witness: Yes.

Mr. Jacobs:

Q. And you took into consideration whatever—you did not take into consideration whatever any investment profits or any activities of your company, save the underwriting expenses of that period?

A. No, sir

Q. In making your figures you adopted the system of computing—started with earned premiums?

A. Incurred losses.

Q. Incurred expenses?

A. Yes, sir.

Q. You took into consideration the unregulated as well as the regulated classifications of insurance which your company is doing?

A. Yes, sir.

Q. Now, what unregulated classes did you consider in arriving at those figures?

A. Well, in addition to the so called regulated classes?

Q. Yes.

A. Whatever business was written by the company covering any class except——

[fol. 190] Q. (Interrupting.) Do you recall what they were?

A. I would say—I am not quite clear on the regulating classes you name—is that fire, tornado and so forth?

Q. Yes, lightning, windstorm and so forth.

A. That included automobile?

Q. You mean the unregulated classes included automobile insurance and all branches save liability?

A. Yes, and whatever premiums there were—any explosion premiums and any sprinkler or leakage.

Q. Did it include marine inland expense?

A. Yes.

Q. Is there any inland marine insurance sold in Missouri?

A. I believe there is; yes, sir.

Q. Are you sure of that?

A. I am——

Q. (Interrupting.) Would your records show the sale of inland marine insurance in the State of Missouri?

A. No, sir; not my records.

Q. Isn't it a fact with reference to marine inland insurance, the only effect the sale of that insurance had upon the experience in Missouri was that there was an allocation of marine and inland expense to the State of Missouri?

A. No, sir. There is an allocation of marine and inland premiums for the State of Missouri for taxation purposes.

Q. Federal taxes?

A. No, state taxes.

Q. Do you mean that you allocated marine insurance if none were sold in the State of Missouri to Missouri for Missouri taxes?

A. That I don't know.

Mr. Hogsett: I object to that assumption that none was sold.

Mr. Jacobs: If none was sold.

[fol. 191] Q. You have no record of any that was sold, have you?

A. I have no record of it; not in this department. It is sold entirely in New York. It is furnished to us for our taxation purposes.

Q. As far as you know there may or may not have been marine insurance sold in the State of Missouri?

A. That I don't know.

Q. You don't know that one way or the other, one way or the other about that?

A. No.

Q. But you did figure a total expense in an allocation of expenses to the State of Missouri which included the expense of handling marine and inland insurance generally in the country?

A. No expenses included in these figures on marine and inland insurance except whatever proportion might have come through——

Q. (Interrupting.) You mean, there is no direct expense from your office here to the State of Missouri as one of your fourteen states, on marine and inland insurance?

A. Yes.

Q. And the reason for that is that there is no marine and inland insurance done in the State of Missouri, isn't it?

A. I don't know that.

Q. Wouldn't you apprehend that there would be some direct expense from your office to Missouri?

A. No, sir; because they don't handle marine business in this department.

Q. Where is it handled?

A. New York.

Q. Don't you handle out of the Chicago office all the insurance business done in your fourteen states?

A. Not the marine business.

[fol. 192] Q. What is it that separates the marine business from the rest so that this office in Chicago has no cognizance of that?

A. Because as a class it is handled entirely through that department.

Q. Because it is not a class of insurance that is sold in states like Missouri, is it?

A. I don't know that. Why do we have to pay a tax on that?

Q. Well, I will ask you about that later. You don't pay taxes on marine insurance in Missouri, do you?

A. On those premiums, yes, sir.

Q. You include marine insurance, you say, in the premiums which you allocated for the purposes of taxation, don't you?

A. Include those premiums in all tax returns to the State of Missouri.

Q. You also include the expense of doing marine and inland insurance through the State of Missouri, don't you?

A. No, we do not.

Q. How do you know you don't?

A. Well, I say we do not, from this department.

Q. Well, because you say you don't handle it from this department, but when you allocate expenses to the State of Missouri from the home office in New York, if you call that the home office don't know what the items are, do you?

A. That apportionment I do not.

Q. So you can't say to this referee that Missouri is not paying expenses on the handling of marine insurance?

A. Not in that way, no.

Q. Because you don't know, do you?

A. No, sir.

Q. But you do know that there isn't a dollar's worth of direct expense that goes from the Chicago office into Mis- [fol. 193] souri, one of the states in this section, for doing marine insurance business?

A. Yes, sir.

Q. Now, I went over the things I think that you took into consideration in arriving at the result of 86 per cent—roughly speaking—just as a general figure everything excepting one other matter. In arriving at your conclusions you did not take into consideration the increase of fifteen per cent in the rates in the State of Missouri during the 5 year period, did you?

A. I had nothing to do with that.

Q. And in making your compilations or your computations you made no effort to apply the increased rates to the entire five years with the idea of definitely learning that result, did you?

A. I did not.

Q. So we have now your method of reaching these results. Now, will you look at your figures and state to the court how much the premiums for, say, 1921, would be reduced if you deducted therefrom all the premiums paid on unregulated business in the State of Missouri?

A. I do not know that I can tell that from the information I have.

Q. Well, now, maybe I can give it to you. Is this about right; that the premiums on unregulated business would be reduced if you left them out of your computation $71,272?

A. For the year '21?

Q. '21 yes. Take one year, and that is the last year; just as well take that as any.

A. Now, what were the figures again?

Q. $71,272.

A. That would be about the premiums on the other classes outside of fire and lightning and tornado.

[fol. 194] Q. And the other classes are the unregulated classes, aren't they?

A. Yes.

Q. Now, the loss on underwriting insurance, the reduction in the loss if you would take out the unregulated insurance, would be how much?

A. I haven't that.

Q. Well, would it be about $79,367?

A. I don't know that I could give you that. I haven't it here.

Q. Haven't you got your losses figured there on the other insurance as you called it yesterday?

A. Yes, right here.

Q. Have you got it?

A. Yes. I have the paid losses.

Q. What have you got?

A. Paid losses on all other classes?

Q. Yes.

A. $96,000.

Q. You have got $96,000—I expect I cheated myself on that, then. My paid losses I had 79, but of course 96—your figures show $96,000 paid losses during that year?

A. Yes, sir, $96,638.

Q. Do you know the percentage of losses on automobile collision insurance?

A. No, sir.

Q. Isn't it a fact that it is more than ninety per cent?

A. I don't know that.

Q. But you do know that on all other unregulated insurance there was a great loss for the year 1921—in other words, there were premiums of 71,000 and losses of 96,000?

A. Yes, sir.

Q. For that year?

A. Yes.

Q. To say nothing of the expense that might have transpired in that time. Now, why do you include the expense [fol. 195] on unregulated insurance in arriving at a regulated rate for the State of Missouri, as an accountant——

Mr. Hogsett: We object.

Mr. Jacobs (continuing): as an accountant. I am not asking for a legal opinion on that matter, but as an accountant, to arrive at the experience of your company for five years on regulated rates, why do you include the expense of unregulated insurance?

Mr. Hogsett: Object to that as calling for a conclusion and speculative and no effort to prove the experience of so-called regulated classes at all; the purpose of this examination has been to show profit or loss on the business of the company in the State of Missouri for the given period.

Mr. Saunders: As Mr. Jacobs indicates, it is not a proper legal question, but is an accounting question.

Mr. Jacobs: I am asking him as an accountant, in making these computations to determine the experience of his company under regulation of certain classes of insurance why he includes the experiences on unregulated classes.

Mr. Folonie: We challenge the assumption that any such thing has been undertaken or done.

Mr. Saunders: His motive is wholly immaterial.

Mr. Hogsett: The question is, what does the law say? The law makes the question whether there has been an aggregate profit of the stock fire insurance for the 5-year period. Now, aggregate profit means just what it says, aggregate profit. It does not mean a profit on a certain part of your business. It means aggregate profit.

[fol. 196] Mr. Jacobs: I think that is a matter that we will have to present later, but the word "aggregate" could just as well be applied to the several classes of insurance which are specifically named in the statute. The word "aggregate" could well mean the aggregate profits or losses of those companies on fire, hail, windstorm or lightning.

Mr. Hogsett: How do you understand the further words in the same section which says the Commissioner under certain conditions "shall order such reduction of rates as shall be necessary to limit the aggregate collections by insurance companies in this state to not more than a reasonable profit"? Are you going to disregard those words "aggregate" every time they occur there?

Mr. Jacobs: You have to read all these regulatory statutes together. This entire law of 1915, in order to de-

termine what the Legislature was driving at, and I have no doubt that when this court reads these statutes together that you will determine in your own mind that there were only classes of insurance which the law permitted this department to regulate, and in addition to that there is a practical question which concerns this referee that the only—only these certain classes have as a matter of fact been regulated; that these unregulated classes of insurance, the rates have been fixed by these companies without interference or regulation or control by the states. That they fixed the rate; that their experience is entirely their own experience independent of any regulation or control on the part of the State of Missouri.

[fol. 197] The Referee: Do you gentlemen desire to be heard further?

Mr. Hogsett: Simply to answer what he says. The mere fact that the commissioner has seen fit only to attempt to reduce rates on certain lines does not change the legal status laid out by the statute, namely, whether there has been an aggregate profit in the 5-year period upon all of the activities of the company. Now, Mr. Jacobs is evidently laboring under the impression that this whole act is simply applied to four lines of insurance. That is not right. The only place fire and windstorm appears in this case is 6270, where it defines which companies shall establish a rating record, and that is in these words: "Every fire insurance company or other insurer authorized to effect insurance against the risk of loss by fire, lightning, hail or windstorm shall maintain a public rating record from which the rate of premium applicable to each risk in this state to be written by such company or other insurer may be ascertained in advance of the making of insurance thereon."

Mr. Jacobs: Well, do you say that applies to classifications of insurance or to each particular risk——

Mr. Hogsett (interrupting): No, to every risk that insurer may take. If you will limit the statute in the narrow way in which you do, then you would have to limit it to fire, because there are frequent sections in here which refer to them only as fire companies. When you come to the question of reduction of rates it deals in the aggregate. The aggregate activities, underwriting activities of all stock fire

companies, and you can't read that into the statute that [fol. 198] way.

The Referee: The ruling on this object is not intended to be decisive of the dispute between counsel as to the proper interpretation of the state. The objection is overruled.

(To which action and ruling of the referee the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs: Will you read the question now?

(Question read by the reporter.)

The Referee: The question, fairly interpreted, I think, does not call for a question of motive so much as an explanation of the method employed by the accountant in reaching the result obtained. Objection overruled.

(To which action and ruling of the referee the plaintiffs, by counsel, then and there at the time duly excepted and still except.)

The Witness: In making this statement it is my purpose to show the profit or loss upon the entire ratings of the company in the State of Missouri.

Mr. Jacobs: Q. In other words, to reach the experience of this company with reference to certain regulated rates you included the experience on unregulated rates?

A. I did not consider the question of regulated or unregulated.

Q. But as a matter of fact that is what you did, isn't it?

A. Yes.

[fol. 199] Q. And if, under these figures, these unregulated classifications of insurance show an aggregate loss, then your figures, then your percentage of profit or your percentage of loss is affected thereby? If a loss, as it happens there, and as you suggested a while ago, there was a considerable loss of that line in 1921, then your loss is tremendously increased by including those classifications, isn't it?

A. Yes, sir.

Mr. Polonie: Compared to what?

Mr. Jacobs: Well, the witness answered the question and said yes.

Mr. Folonie: Just as intelligble then as the question, I should say.

Mr. Jacobs:

Q. Well, the witness understands the question, maybe you don't.

The Referee: Proceed.

Mr Jacobs:

Q. Now, Mr. Toles, on your unregulated insurance do you know what your premiums were for 1921? Look on your list there and see if it was not about $72,282.

A. On all other classes for the year 1921?

Q. Yes. I will call it unregulated insurance.

A. You mean the gross net loss? Or gross net premiums?

Q. Yes, the gross net premiums.

A. $75,396 shown here.

Q. What are your total premiums for that year?

A. On the same basis?

Q. No, for all—yes, for that year. All classes of insurance, 1921, in Missouri.

A. $435,635.

[fol. 200] Q. Now, are your figures any different on this instrument you have here from your reports in the State of Missouri for that year?

A. No, sir.

Q. Isn't it a fact that your report for 1921 in Missouri showed premiums of $405,527, 1921?

A. No, sir.

Q. That is not a fact?

A. No, sir.

Q. At any rate, according to your figures, there was about—how much unregulated expense—I mean, how much unregulated premium?

A. $75,396. In that $75,000 is included the re-insurance assumed.

Q. Well, take that off. Give me the direct. Well, let it go if you can't do it readily. Although I may want you

to give me the direct figures later on. Now, is this your annual report to the State of Missouri (Indicating document)?

A. No, sir, that is the underwriting report.

Q. That is what you call the underwriting report?

A. Yes?

Q. Is that correct?

A. As far as I know.

Q. What is this figure right there (indicating)?

A. $405,527.

Q. What does that represent?

A. Represents the regulated class premiums.

Q. Represents the regulated class premiums?

A. Yes, sir.

Q. Alone?

A. Yes, sir.

Q. That does not represent anything excepting the regulated classes?

A. Yes, it does. It includes automobile premiums, explosion.

[fol. 201] Q. What else?

A. That seems to be all.

Q. In other words, it includes the non-regulated and the regulated classes?

A. Yes, sir.

Q. And is a total of $405,000?

A. Yes, sir.

Q. (Continuing:) $527.75?

A. Yes, sir.

Q. Now, isn't that different from the figures you have on your compilation which you have offered in evidence here?

A. Yes.

Q. Now, what makes that difference?

A. I would have to figure that out.

Q. Well, you are wrong, aren't you, if this is right?

A. No, because you are asking me about two different kinds. The first one was about my annual statement.

Q. Your annual statement would not be any different from your underwriting reports on a fact like that, would it?

A. Yes.

Q. You mean to say when you figure total premiums in

the State of Missouri including regulated insurance and non-regulated insurance that there would be two different reports to the State of Missouri?

A. Yes.

Q. Why?

A. Because they are on two different bases entirely.

Q. Well, don't both of them include all of it?

A. No, sir, that statement there does not include any re-insurance at all, one way or the other.

The Referee: You are now referring to the underwriting exhibit?

[fol. 202] A. Yes, sir. It doesn't take into consideration reinsurance.

Mr. Jacobs: Well, is there some re-insurance in that figure you have given?

A. Certainly. Your annual statement calls for it.

Q. How much is it?

A. I would have to figure that out.

Q. Well, can you figure it out without looking at this sheet? Have you any figure there on direct insurance—total direct premiums?

A. Yes, sir.

Q. What are they?

A. $541,157.

Q. Well, that does not include re-insurance, does it?

A. No, sir.

Q. Well, that's what I am talking about. You have $541,000?

A. Yes.

Q. And this figure is $405,000?

A. Well, remember, there are some cancellations to come out of that year.

Q. What are they?

A. One hundred and twenty-six thousand and some odd.

Q. What does that leave you, then? Deduct that.

A. $414,554.

Q. So you are still different from your underwriting report, aren't you?

A. How much is that?

Q. $405,000. You are about $9,000 off, aren't you?

A. There were certain items in our records for the year 1921—I can explain that different to you.

Q. All right. Go ahead.

A. Certain items in our statement to the Department for the year 1921 of figures that were not included in the underwriting exhibit.

[fol. 203] Q. You mean in the annual statement?

A. Yes.

Q. What were they?

A. They were put in there for taxation purposes, and they were figures furnished to us by the southern department of the company; business that was not written through this department here.

Q. For what taxation?

A. Taxes to the State of Missouri, on those premiums.

Q. Why, Mr. Toles, you pay Missouri a gross premium tax, don't you?

A. Yes.

Q. And for business done in Missouri?

A. Yes.

Q. Where did you get these premiums from the southern department?

A. They are written by the southern department on property in the State of Missouri.

Q. Where is that located?

A. Atlanta.

Q. You mean to say that both the Chicago office and Atlanta office handle the State of Missouri?

A. They write certain business in the State of Missouri.

Q. What business is that?

A. What is called the Cotton Association.

Q. And you got premiums from Atlanta?

A. Yes.

Q. How much did that amount to?

A. $840 that year.

Q. What else?

A. The Oil Association also handled.

Q. How much is that?

A. $2,734.

Q. That is $3,500 difference?

A. Yes.

Q. And how much more?

A. $1,730 of the Grain Association, written through this office that inadvertently was not included in that statement.

[fol. 204] That is $5,200?

A. Yes, sir and that is about your difference

Q. But there is a $9,000 difference here?

A. That is $9,000.

Q. Not these figures you gave me. Put them down First, there was 800 something, wasn't there?

A. Yes.

Q. Then what was the next one?

A. Oil Association, $2,734. The Grain Association——

Q. (Interrupting.) How much is that?

A. $1,730.

Q. Now, there is another item here?

A. Yes.

Q. What is that?

A. Marine reported to us.

Q. How much is that?

A. $3,712.

Q. Now, do you say, Mr. Toles, that that business was done in the State of Missouri?

A. So far as I know.

Q. That there was $3,712 worth of marine business done in the State of Missouri?

A. It was reported to us in that way.

Q. Don't you know, as a matter of fact, there isn't a dollar's worth of marine business done in the State of Missouri?

A. I do not.

Q. Don't you know that that is an apportionment from your New York office, that was never done in the State of Missouri?

A. I do not.

Q. And that is why it came to you from the New York office instead of this office that handles a business in the State of Missouri?

A. I do not.

[fol. 205] Q. Why doesn't this office handle the marine business?

A. Because we don't handle any marine business.

Q. Why?

A. Because it is a department by itself.

Q. But this department has a certain section of the United States, fourteen states, where they handle the insurance business of your company, don't they?

A. We do not. We do not handle marine business at all.

Q. You handle business for the Royal Insurance Company in fourteen states, from the Chicago office, don't you?

A. Yes.

Q. But the marine business is not handled from this office?

A. No.

Q. Are those fourteen states Middle West states?

A. Yes.

Q. Where there is no marine business done, eh?

A. I don't know about that.

Q. You know, as a matter of fact, the reason there isn't any marine business handled through the Chicago office is because there isn't any marine business in your fourteen states?

A. That I don't know.

Q. But outside of that $3,712 these other items, you say, were charged to the State of Missouri from Atlanta, Georgia office?

A. They were credited to the State of Missouri.

Q. Credited in the way of premiums to the State of Missouri?

A. Yes; outside of the Grain Association part.

Q. You say that was inadvertently left out of your report?

A. Yes.

[fol. 206] Q. And was added in your figures for the hearing here?

A. No, it was in the annual report statement, but not in the underwriting statement.

Q. All right, if we have got your direct premiums in the neighborhood of four or five or six hundred thousand dollars, and there is a reduction of around 72 or 73,000 for non-regulated insurance, that is a reduction of about eighteen per cent, isn't it?

A. About that, I guess.

Q. Now, if your losses—if the losses for unregulated insurance were in the neighborhood of $79,367 and your

total losses for that year were $293,000, that is a reduction of about twenty-seven per cent, isn't it, in the loss ratio?

A. Yes, sir.

Q. Now, your total premiums were in the neighborhood or were in the neighborhood of four or five or six hundred thousand dollars outside of these special items you have given?

A. Yes.

Q. And your reduced premiums makes that difference of about eighteen per cent, but when you reduce the losses for unregulated insurance it amounts to twenty-seven per cent, doesn't it?

A. I haven't figured it out.

Q. Well, can you figure—your total losses were $293,000, weren't they, for 1921?

A. What are those losses you are giving me?

Q. The losses for the year 1921—total losses; total direct losses.

A. I haven't got that here. That must be on the underwriting exhibit.

Q. It is, yes. Well, now, if that is a fact—is this your underwriting report (exhibiting document)?

A. Yes.

[fol. 207] Your total direct loss amounted to $293,940.22 under that report?

A. Yes, sir.

Q. Now, how much of those losses would be taken out of there if you do not consider unregulated insurance?

A. $79,000.

Q. $78,367.78, that's right, isn't it?

A. Yes.

Q. And those figures represent the losses paid in 1921 in the State of Missouri on what you term or what we are now terming non-regulated insurance?

A. Yes, sir.

Q. What precentage is that of your total direct losses?

A. That 79,000.

Q. Yes, what percentage is that of your total direct losses?

A. About twenty-seven per cent.

Q. About twenty-seven per cent. Now, on your expenses for 1921, what were your total expenses in the State of Missouri?

A. $194,906.

Q. And what were the expenses which are chargeable against non-regulated insurance?

A. I haven't got that.

Q. You haven't got it?

A. No, sir.

Q. Well, while he is looking up that matter for me—the result, Mr. Toles, the result of taking out the losses of unregulated insurance reduces your loss ratio for that year of 1921 in the State of Missouri from seventy-two and a half per cent to sixty-three per cent, doesn't it?

A. I don't know.

Q. Well, can you figure that on the figures you have here, which you have in your compilations and which you found [fol. 208] in your underwriting report?

A. I haven't got the figures to work that out on. I haven't got the——

Q. (Interrupting.) You testified yesterday to a loss ratio of seventy-two and a half per cent, didn't you?

A. On an earned basis.

Q. And if you reduced those losses the same, the 79,000, can you figure what the reduction of the loss ratio would be—basing that upon your total losses?

A. What were the losses you quoted?

Q. $293,940.

A. Where did you get that?

Q. How is that?

A. Where did you get that?

Q. That $293,000?

A. Yes.

Q. Aren't those your total direct losses for 1921?

A. I haven't given you the total direct losses anywhere that I know of.

Q. Didn't you just look it up on your underwriting report and didn't you testify to it from your underwriting report as submitted to you?

A. Well, give it to me again.

Q. $293,940. Here, let me show it to you. Total direct losses, isn't it? I am now showing you your annual underwriting report for 1921?

A. Yes.

Q. For your company. What are your direct losses as it appears in that report?

A. $293,940.

Q. And 22 cents. That is correct, isn't it?

A. Yes.

Q. Well, that is where I got the figure.

A. What are those unregulated classes?

Q. I am now reading from your annual report—I mean, your underwriting report, $79,367.78. Now, that is correct, isn't it, on your report

A. Yes, sir.

[fol. 209] Q. I want to get the loss ratio with the regulated and non-regulated insurance in it, and then with the non-regulated insurance taken out.

A. I have no—this loss ratio of 83.7 per cent is on an earned premium basis.

Q. 83, did you say?

A. Wasn't that what you gave—83.7?

Q. Were those the figures you gave yesterday?

A. Yes, sir, on an earned premium basis.

Q. Can you tell what it would be on the paid premium basis?

A. No, sir.

Q. Well, figuring it on the earned premium basis, what would be the reduction with those non-regulated classifications taken out?

A. I couldn't tell you that because these earned premiums include all classes. I haven't that separated into regulated and non-regulated classes.

Q. Well, I gave you that, didn't I?

A. No.

Q. What do you want in addition to what you have got?

A. I would have to have the earned premium.

Q. Is there any way for you to figure it on your report?

A. Not here, no.

Q. You can't separate it?

A. No, sir, not now. I would have to get that in some other way.

Q. Well, the fact is we are agreed on this, that there is about a reduction of twenty-seven per cent by taking off these losses on the non-regulated classes. We agreed on that a while ago, didn't we?

Mr. Folonie: Object to that, because that assumes it is a per cent of the premiums, whereas he was taking one

portion of the losses compared to another loss figure, and [fol. 209a] taking the portion of that, and that is an entirely different ratio.

Mr. Jacobs: No. I am not assuming that.

Q. Nine and a half per cent was not the percentage of the reduction in the loss ratio, and that is a matter that you just got through saying you couldn't answer because you couldn't separate these premiums. That is a fact, isn't it, Mr. Toles?

A. Yes, sir, that twenty-seven per cent was a reduction of the losses.

Q. Yes, that's right. And you are not prepared to say whether or not it is a fact that there is a reduction in the loss ratio from seventy-two and a half per cent to sixty-three per cent or a reduction of nine and a half per cent in the loss ratio, are you, at this time?

A. No, sir.

Q. Now, what about your expenses? What do you know about your expenses that you have got there for 1921?

A. What do you want to know?

Q. I want to know how much your total paid expenses are?

A. $194,906.

Q. What is that, about forty-eight per cent of the premiums?

A. On a paid basis?

Q. Yes.

A. Upon what basis of premiums?

Q. What percentage would that be of the premiums earned, as you have there?

Mr. Folonie: We will object, because the percentage of paid expenses to earned premiums would furnish a figure that is not contended to be correct by either side and could only be a misleading figure given there. They are not two relative figures in any proper sense.

[fol. 209b] Mr. Jacobs: All right, if there is no contention that would bring the correct result on either side, we will leave it out.

Q. Now, is there any way that you could compare those expenses—the expenses for that year, 1921, with the premiums and give your expense ratio?

A. On what premium basis?

Q. Well, on what you got. What did you tell the court yesterday your expense ratio was for 1921?

A. On an earned premium basis, 53.6 per cent.

Q. By that you mean that for every dollar's worth of insurance, figuring on an earned premium basis, that was sold in the State of Missouri, the company spent 53 cents?

A. Yes, sir.

Q. Now, is there any way whereby you can take out the expenses that are properly chargeable against non-regulated insurance?

A. No, sir.

Q. Can you do it upon the basis of the per cent of business done along non-regulated lines, with your total premiums that you had a little while ago? In other words, you had $72,000 worth of premiums on non-regulated business. You had $405,000 as a total; or about eighteen per cent non-regulated business. Now, with that figure can you arrive at the proportionate amount of those expenses that should be chargeable against non-regulated insurance?

A. Not a correct proportion, no, sir.

Q. Why can't you?

A. Because the expense of non-regulated class is something I don't know.

Q. But you have a total expense for the State of Missouri, haven't you?

A. Yes.

[fol. 210] Q. And you have got a total premium collection for the State of Missouri?

A. Yes.

Q. As a fixed figure?

A. Yes.

Q. And you have a fixed figure that you can—for the amount of premiums collected for non-regulated insurance for that year?

A. Yes.

Q. Which is a proportion of eighteen per cent of the whole, isn't it?

A. Yes.

Q. Can't you, upon that basis, figure what proportion of expense should be charged?

A. I don't think so. I don't think it would be correct.

Q. Because it would merely be an estimate or compilation or a calculation?

A. No, because the expense upon your unregulated classes are something very different than those on regulated classes.

Q. Well, why are they so different?

A. Because we are including in these premiums, premiums which you have no expense—which we have no expense in collecting ourselves, in this department.

Q. I am talking about the Royal Insurance Company. You are figuring the insurance from New York and from Georgia, so don't limit this particular matter to Chicago.

A. I don't know what the expenses are for that business.

Q. But you know the percentage of the business as against the total business for that year, don't you?

A. That would not give you the basis.

Q. Well, you are compiling and calculating in other directions for purposes of this hearing, aren't you?

A. Only upon actual facts and conditions.

{fol. 211} Q. You said yesterday that in using the system of incurred losses and incurred expenses, and particularly incurred losses, that in an ascending scale of business, there would be a disproportionately great reduction at the end of the term of five years which would operate to increase any apparent loss, didn't you? You testified to that yesterday, didn't you?

A. I believe I did, yes, sir.

Q. Now, that is a calculation, isn't it, Mr. Toles?

A. One that I did not make.

Q. Why, you made the calculation of compiling these figures, didn't you?

A. I did not; not that kind that you ask me.

Q. Well, who made them? You use that system in compiling these losses you testified to yesterday, didn't you? When you testified there was a loss of sixty-five per cent or thereabouts in one year you were using the incurred loss system and earned premium system and the incurred expense system, weren't you?

A. Yes, sir.

Q. And when you used it you knew for the purposes of this hearing that the net result would be to enhance the apparent losses for that period, didn't you?

A. I did not know that.

Q. Why, you testified to it yesterday and you testified to it less than five minutes ago, didn't you?

Mr. Folonie: Object to that on the ground the record will show for itself.

Mr. Jacobs: All right. Withdraw that.

[fol. 212] Q. Now, let's get this matter, if we can, into the record, anyway, and then we can present it to the commissioner later. If the regulated premiums amount to a definite sum which you have and the non-regulated premiums for 1921 amount to eighteen per cent of the whole, will you reduce your total expense eighteen per cent?

A. No, sir, I would not.

Q. Even if I asked you, you wouldn't do it?

A. I wouldn't do it if I was making a compilation that way.

Q. Well, I am going to ask you to do it now. What was your total expense, $196,000?

A. $194,906.

Q. Well, I have got a little bit different expense from you here. Let's see your report. Now, look here—I am showing you now the underwriting report of your company to the State of Missouri for 1921, and I ask you if it doesn't show an expense of $196,647.53?

A. Yes, sir.

Q. Well, is that correct?

A. I believe it is.

Q. All right, then you are wrong on your compilations about your expense, aren't you? Well, withdraw that. Your compilation differs a couple of thousand dollars—we will put it that way.

Q. Now, then, take off eighteen per cent of that $196,647, does that amount to about $146,123?

A. Eighteen per cent?

Q. Yes.

A. No, sir.

Q. What have you got?

A. About $35,000.

Q. Well, reduce your total expense by that.

A. $194,000?

[fol. 213] Q. Well, never mind going through the figure

of reducing that, but what—there is probably at least a prorated reduction of expense of eighteen per cent, isn't there?

A. Yes, sir.

Q. And a reduction on losses of about twenty-seven per cent?

Mr. Hogsett: We object——

Mr. Jacobs (continuing):

Q. On the total loss, according to our figures of a while ago?

A. Reduces your losses, you mean?

Q. Yes, of twenty-seven per cent.

Mr. Hogsett: We object to the assumption that is any percentage of reduction of the premium income or premium written, either one. That ratio was a ratio of expense to expense.

Mr. Jacobs: That is what I am asking.

Q. That is a fact, isn't it? Around about—amounting to about forty-five per cent, the two of them?

A. What was the question?

Q. That it is a reduction of the losses of twenty-seven per cent, and of the expenses, eighteen per cent?

A. Yes, sir.

Q. Or a reduction of the two of them of about forty-five per cent, wasn't it?

A. Yes, sir.

Q. And the premiums were reduced on unregulated insurance eighteen per cent?

A. Yes, sir.

Q. And you are not in a position now because of your inability to separate the premiums upon a paid basis to tell us what the change would be in the loss ratio, taking out the unregulated insurance?

A. No, sir.

[fol. 214] Q. But you know that the loss ratio would be decreased, don't you?

A. I wouldn't want to state that.

Q. Well, you know without being able to give them but upon the figures that you have before you that the result would be a reduction of the loss ratio, don't you?

A. Might be a corresponding reduction in the earned premiums that would offset it. I can't tell you that.

Q. But don't you know that upon these figures the net result would be a reduction of the loss ratio for the State of Missouri?

A. No, sir.

Q. Is there any way you can separate them and get those paid premiums in here so you can testify?

A. I don't think so.

Q. You haven't any figures in your office here in Chicago that would show?

A. No.

Q. You haven't. Very well. Now, what did you give as the loss ratio for 1921?

A. On the earned premium basis?

Q. Yes.

A. Loss ratio, 83.7.

Q. Now, on a paid premium basis, you know that would be reduced, don't you?

A. Yes, sir.

Q. Bound to be, isn't it?

A. Yes, sir.

Q. But you don't know how much?

A. No, sir.

Q. And the expense ratio on a paid premium basis would be reduced?

A. Yes, sir.

Q. Bound to be, isn't it?

A. Yes, sir.

Q. That is what I asked you a while ago. So without being able to say because of your inability to separate those [fol. 215] figures at this moment, you know the net result would be a reduction on the apparent loss for that year, wouldn't it?

A. I believe it would.

Q. Now, I am going to ask you about some—what is the name of the president of your company?

A. I don't know.

Q. Don't you know the name of the president of your company?

A. I do not.

Q. Where does he live? Do you know where he lives?

A. No, sir.

Q. And you have been employed by this company for thirteen years, the head of one of its big departments in the City of Chicago, is that right?

A. Yes, sir.

Q. Do you know the deposit capital of your company in the United States?

A. I do not—unless I refer to the statement.

Q. Well, the fact of the matter is it is $662,000, isn't it?

A. I couldn't swear to that, because I haven't looked at the statement.

Q. Are you willing to admit that your annual statement will show a deposit capital in the United States for your company of $662,000?

A. Yes, sir.

Q. That is, that peculiar situation of having a deposit capital because yours is an English company, isn't it?

A. Yes.

Q. Now, I want to ask you if for the year 1917 your company did not make an investment profit in the United States of $48,093?

A. I don't know.

[fol. 216] Q. I want to ask you if in the year 1918 it did not make an investment profit in the United States of $413,099?

A. I don't know.

Q. I want to ask you if in 1919, your company did not make an investment profit in the United States of $362,348?

A. I don't know.

Q. And if in 1920, it did not earn in the United States as an investment profit $713,409?

A. I don't know.

Q. And if in the year 1921, it did not earn an investment profit of $1,100,457?

A. I don't know.

Q. And if in your total five years, 1917 to '21, inclusive, your company, the Royal, did not earn as an investment profit in the United States the sum of $2,637,403?

A. I don't know.

Q. You have no way of knowing that?

A. No, sir.

Q. Where are those figures available?

A. I presume in New York.

Q. Are any of them available upon report made in the office of the Insurance Commissioner of Missouri?

A. Possibly in the annual report.

Q. In the annual report?

A. Yes, sir.

Q. Now, if these things appear in the annual report of your company, are they correct?

A. I don't know.

Q. You wouldn't vouch for the annual report your company makes to the State of Missouri?

A. I would not.

[fol. 217] Q. All right. Basing those figures, if they are correct, upon the deposit capital of your company in the United States of $662,000, isn't it a fact that that is an average profit per year for these five years of eight per cent?

A. I don't know.

Q. You don't know. Can you figure it? Take $662,000, Mr. Toles, as your capital—your deposit capital for the United States and put it down on your paper, $662,000. And take a total investment earning of $2,637,403 (witness makes calculation).

A. 399.

Q. How much does that amount to per year? You are figuring a 5 year experience.

Mr. Folonie: We object to that as immaterial.

Mr. Hogsett: And for the further reason there is no basis for the assumption. Mr. Jacobs is just asking questions and the witness says he doesn't know whether those are the figures or not. He is assuming a state of facts.

The Referee: I suppose the witness, as a matter of accommodation, is making certain calculations for Mr. Jacobs on the assumption of the truth of certain statements made by Mr. Jacobs.

Mr. Hogsett: Which have not yet been proven.

Mr. Jacobs: We haven't got to it yet.

Q. How much a year?

A. 79.

Q. 79 plus?

A. Yes.

Q. Between 79 and 80 per cent per year?

A. Yes.

Q. Now, you didn't take any figures—you didn't look on the annual report or get any information from New York or London or Liverpool or wherever this information might [fol. 218] be on the investment profit to the end that you might compile them for this hearing, did you?

A. No, sir.

Q. If it is a fact that there was an investment profit of between 79 or 80 per cent, that is far greater than any average loss that you claim occurred for the five years that you testified to yesterday, isn't it?

Mr. Hogsett: Wait a minute. One is percentage of capital, and the other is a percentage of premium which obviously are not comparable items at all.

The Referee: The facts show for themselves.

Mr. Jacobs: The fact is you claim an average—claimed an average yesterday of twenty-six per cent loss for the five years underwriting expense?

A. Yes, sir.

Q. And that included this way of figuring the unregulated insurance and everything of that kind?

A. Yes.

Q. Now, your expense account that you have charged against Missouri is a total sum or is it itemized?

A. Itemized.

Q. That is, in this fashion, home office expense and salaries, isn't it?

A. Those are one of the items that are proportioned, if you remember.

Q. Yes, I know. And you have nothing to offer the referee on that item excepting the general statement, "Home office salaries and expenses"?

A. That is all.

Q. You are not in position to give this referee the items which make up the sum out of which Missouri was allocated a certain part?

A. No, sir.

[fol. 219] Q. Is there any way that you can get the in-

formation for this referee of what the paid premiums per year were in the State of Missouri?

A. Yes, sir.

Q. And the paid losses and the paid expenses?

A. Yes, sir.

Q. That is what we would like to have. When can you have that?

A. I think I have them—I can't give you the paid premiums, no, sir. I can give you written premiums.

Mr. Hogsett: Isn't that what you mean?

Mr. Jacobs: Yes, they are the same, aren't they?

A. Oh, no.

Q. What is the difference?

A. Written premiums, those written, and those paid are those collected.

Q. Actually paid?

A. Yes, sir. There is a distinction.

Q. You can't give me the premiums paid each year?

A. No.

Q. Can you give that information?

A. No.

Q. Why?

A. Well, I would have no way of getting it.

Q. Can you not tell from your records how much the premiums paid are for Missouri each year?

A. No, we don't keep our records in that way. I can give you the written premiums for Missouri.

Q. I am willing to figure on the written premiums, but you might object to that.

The Referee:

Q. Mr. Toles, wouldn't the records of the company show the amount of premiums actually collected in the State of Missouri in each year, in the year, say, 1918?

[fol. 220] A. I don't believe they would, Your Honor. I don't know that I could possibly get that.

Mr. Jacobs:

Q. Well, you can give us written premiums minus return premiums, can't you?

A. Yes.

Q. Will you figure your experience, say, for this period of time, but I don't think I will ask you to do it at this moment, because it will take you too long—but will you figure your experience based upon the written premiums for each year of the five-years' experience, 1917 to '21, inclusive, minus, of course, the return premiums?

A. Let me get that.

Q. Figure your experience for your five years based upon written premiums minus return premiums and paid losses and paid expenses.

Mr. Folonie: You are speaking about direct when you are talking written premiums there?

Mr. Jacob: Yes.

The Witness: Written direct premiums?

Mr. Folonie: So he won't be confused what you are asking for.

Mr. Jacobs: Also direct losses. And leave out of consideration the non-regulated insurance; both with respect to the premiums and the losses and the expenses.

A. In other words, that is on the regulated classes.

Q. On the regulated classes alone. And reduce the expenses that should not be charged in the State of Missouri for regulated classes. In other words, don't put in the expenses for the entire amount and reduce the premiums on the amount of the unregulated business. Can you get that up?

[fol. 221] A. I am not so sure about those expenses because I might have difficulty in proportioning that.

Q. Well, see what you can do about that. Did you testify yesterday that there were no Federal taxes proportioned to Missouri or paid in Missouri in your expense account?

A. I believe there is not, no, sir.

Q. Were there any charged in your report?

A. If they were, it was charged in as a proportionate part. There was no direct charge—not for Federal taxes. There might be in some of those years when we paid the tax on premiums. It was a one per cent tax.

Q. There was a one per cent tax on your gross net premiums?

A. Yes.

Q. And that was paid, and that appears in the report?

A. Yes, sir.

Q. Now, these expenses which you have allocated to Missouri I believe you testified yesterday that there was a separation of the disbursements as far as you knew?

A. Of what?

Q. Of the disbursements in the matter of expenses—say, at the home office?

A. I don't know just what you mean.

Q. In the home office in New York that character of business is transacted, isn't it?

A. Yes, sir.

Q. And the states are apportioned a part of the indirect expense—the various states, aren't they? In other words, Missouri was apportioned a certain percentage or part of the expense?

A. We did that here.

Q. On figures from your New York office, didn't you?

A. Figures taken from the annual estatement.

[fol. 222] Q. Well, they were secured in New York?

A. Statements were, yes, sir.

Q. And written in New York?

A. Yes, sir.

Q. And you know nothing of the separation of the departments there, do you?

A. No, sir.

Q. So, as far as you know, there was allocated to Missouri its proportionate part of all expenses incurred in the home office?

A. Yes, sir.

Q. And that would include the expense of operating the investment department, wouldn't it?

A. I would say so, yes, sir.

Q. Will you explain to the referee how you handle the salvage department?

A. I am not competent to explain that because it is not in my division.

Q. Where is it?

A. Loss department handles that.

Q. In Chicago?

A. Yes, sir.

Q. You can't report on that at this time, eh?

A. No, sir.

Q. Isn't it a fact, Mr. Toles, that if you take out the consideration of the unregulated insurance and reduce your premiums accordingly and base your expense against the reduced premiums, that the apportionment of expenses allocated to the State of Missouri on indirect expenses will be reduced from two and a half per cent to one and eighty-seven-hundredths per cent?

A. I couldn't say that.

Q. Are you in position to make that calculation?

A. Not at the present time, no, sir.

[fol. 223] Q. You can't make that at present?

A. No, sir.

Q. You know without being able to give the figures that the net result would be a reduction in the proportionate part of the expenses allocated to Missouri, don't you—that would operate as a reduction?

A. I believe it would.

Mr. Jacobs: I believe that is all.

Redirect examination by Mr. Folonie:

Q. Mr. Toles, you were asked by counsel yesterday whether you had made a calculation, which, as I recall his question, was the proportion which the paid expenses and the paid losses bore to net gross direct premiums of the State of Missouri, and you said you had made such a calculation at some previous time, but didn't have it with you. Have I correctly stated, as you remember it, what was asked for?

A. Yes, but I haven't that on the paid loss basis; I have it on the incurred loss basis all the way through.

Q. You have made the calculations on a basis other than the earned premium and incurred expense and incurred loss basis, have you not; a number of different calculations?

A. Yes, sir.

Q. And those calculations, as you have made them on a different basis, have you them with you today?

A. Yes, sir.

Q. And is it at my request that you brought them here today if they should be asked for? Isn't that a fact?

A. Yes, sir.

Mr. Jacobs: Will you let him read that last question? I didn't quite understand that. Can you read that ques-
[fol. 224] tion so that I can understand what he brought?

(Questions and answers of the redirect examination thus far here read by the reporter.)

Mr. Folonie: I might say, for benefit of counsel, you asked him yesterday about some computations which he had made and didn't have them with him.

Mr. Jacobs: But he says he hasn't got them now.

The Witness: I have them on still another basis.

Mr. Folonie:

Q. In your annual statement to the State of Missouri, Mr. Toles, did you give figures as to the amount of incurred losses in those reports from year to year to the state department?

A. In the annual statement itself?

Q. Yes.

A. Yes.

Q. And has an inquiry as to the amount of incurred losses, has it not?

A. Yes.

Q. You were interrogated by counsel about the basis of determining earned premiums, and you stated in substance that those you computed by taking the written premiums for a given term, taking the amount of the unpaid premiums at the beginning of a given term, or the unearned premiums at the beginning of a given term, adding those in, taking the unearned premiums at the end of the term and deducting them out—does it make any difference in making such a calculation, whether the term which you are computing is one year, two years, three years or five years as to the method pursued?

A. No, sir.

Q. And if you computed it with the figures at the beginning and at the end of one year, you would therefore arrive
[fol. 225] at the earned premiums for a one-year period?

A. Yes, sir.

Q. And if you did it at the beginning and at the end of five years, you would have the earned premium for five years?

A. Yes, sir.

Q. I will ask you whether there is any other method known to you for correctly computing earned premiums over a given term than the method mentioned?

A. No, sir.

Q. Is such method in common and general use in computing and calculating such an item?

A. Yes, sir.

Q. I will show you an annual statement blank for the State of Missouri for the year 1921, and ask you to refer to page 10, and ask you whether there is any method shown there for computation of earned premium, and if so, just read the printed part of the blank, relating to that particular subject.

A. "Underwriting Exhibit. Premiums. 1. Total premiums per items 17 and 18, page 2, blank dollars less blank dollars per item 30, page 3, blank dollars." Do you want me to explain what that is?

Q. Go ahead and make it intelligible to us. That is reference, I presume, to lines of this same blank on other pages?

A. Yes, the line 1 covers the written premiums for the year. Line 2 says, "add unearned premiums Dec. 31, 1920, per item 4, of last year's exhibit." That corresponds to the last report here for the previous year. Then the next line is the total of the two. Line 4. "Deduct unearned premiums Dec. 31, 1921, per item 19, and blank dollars reclaimable on perpetual insurance, per item 20, page 5." [fol. 226] And line 5 says: "Premiums earned during 1921," which is the amount remaining after deducting line 4 from line 3.

Q. Well, to make a long story short, is the method there for computing earned premiums the one you stated here you adopted?

A. Yes, sir.

Q. Now, where is the provision in this department for computation of losses—of incurred losses?

A. Right here (indicating).

Q. What does it say there?

The Referee: Still reading from page 10?

Mr. Folonie: Yes.

The Witness (reading): "Losses. Line 14. Losses paid, per item 13, page 3."

"Line 15. Deduct Salvage and Reinsurance Recoverable Dec. 31, 1921, per items (a), page 4."

"Line 16. Balance.

"Line 17. Add Salvage and Reinsurance Recoverable Dec. 31, 1920, per item 15 of last year's exhibit.

"Line 18. Total.

"Line 19. Deduct Unpaid Losses Dec. 31, 1920, per item 21 of last year's exhibit.

"Line 20. Balance.

"Line 21. Add Unpaid Losses Dec. 31, 1921, per item 14, page 5.

"Line 22. Losses Incurred during 1921."

Q. Now, the expenses: What does the same blank on the same page provide respecting that?

A. "Underwriting Expenses.

[fol. 227] "Line 23. (c) Underwriting Expenses paid during 1921, per Disbursement Exhibit, page 3, blank dollars.

"Line 24. (A) Deduct Underwriting Expenses unpaid Dec. 31, 1920, per item 27 of last year's exhibit.

"Line 25. Balance.

"Line 26. (a) Add Underwriting Expenses unpaid Dec. 31, 1921, per Liability Exhibit, page 5, viz:

"Line 27. Underwriting Expenses Incurred during 1921."

Q. Now, I will ask you in the tabulation above line 6, here, what that caption is as to that part of the statement?

A. "Underwriting Profit and Loss Items."

Q. Now, which line of the ones relating to premiums on this page is carried out in a column as a total of the lines preceding?

A. Line 5.

Q. That is the one that says, "Premiums Earned during 1921"?

A. "Premiums Earned during 1921."

Q. And what item is carried in a separate column as a total respecting losses?

A. Item 22, "Losses Incurred during 1921."

Q. And what item under expenses is carried out in a separate column as a total of a preceding item?

A. Line 27, "Underwriting Expenses Incurred during 1921."

Q. Now, I will ask you whether the method of calculation so specified in that report blank as provided by the State of Missouri for your use in making that annual statement, whether it differs in the method of computation in any particular on the page that I have mentioned respecting calculations of earned premiums, incurred expenses and incurred losses, from the method which you [fol. 228] have testified to here on your direct examination.

A. No, sir, it does not.

Q. Now, is that blank in that particular peculiar to the State of Missouri or is that uniform in the states you have to do with?

A. It is a uniform blank in that respect.

Q. Been any different during any of the five years mentioned or have been the same throughout that period?

A. The same.

Q. Where do you get—who issues or sends out those blanks?

A. They are issued by the general attorney's office in New York.

Q. And where does this blank come from?

A. State department.

Q. I mean, for the different states; where do you get them? Where does your company get them?

Mr. Jacobs: One minute. If this witness knows. Defendant objects to any testimony of where the New York office gets this.

The Referee: Testify to facts only that you know of your own personal knowledge, Mr. Toles.

The Witness: What was the question?

(Question read by the reporter.)

The Witness: The states under the jurisdiction of my department, they come from the Insurance Departments of those states; they are sent to me, and I forward them to New York.

Mr. Folonie:

Q. In making your computations upon a predicate of earned premiums, as considered comparatively with basis of written or paid premiums, in your opinion as an account-

[fol. 229] ant which is the proper figure to take in ascertaining and computing the profits or losses written on the books of insurance of an insurance company?

A. I would say, if you want to know the profit or loss made by an insurance company, you would have no other basis to take except the earned premium basis.

Q. Can you elaborate and state why?

A. Well, in case your company should become embarrassed or become obliged to reinsure the unearned premium, is an item that would have to be paid out and could not be considered as a part of the profits of the company until after it had been earned.

Q. If the company on December 31 of a given year quit business entirely, and during the next succeeding year during which it wrote no business at all, but its losses and expenses were continued to wind up its business, if you should adopt a paid basis, what basis would you have for such a year of calculating profit or loss at all, if you were taking a written premium basis?

A. You wouldn't have any.

Mr. Hogsett: Mr. Jacobs, it is admitted, is it not, that this blank is furnished by the defendant?

Mr. Jacobs: I don't think there is any doubt about that. It is admitted, of course.

The Referee: When you refer to this blank you had better identify it.

Mr. Hogsett: The blank to which reference has been made by the witness; upon which he read on page 10.

[fol. 230] Mr. Jacobs: That is a fact; we admit it as a fact.

Mr. Folonie:

Q. Talking a little about reinsurance, Mr. Toles, to get at the method of doing business and relating particularly to counsel's question of pyramiding, as he called it: In the case where your company is direct insurer, and re-insurance policies of the risk so taken are, for example, in five other companies, retaining a portion of it itself—who handles the business of collecting the initial premium from the insured as between the company ceding and the companies assuming the re-insurance?

A. The direct-writing company.

Q. Do the companies to whom the same is in turn ceded have anything to do with that part of it?

A. No, sir.

Q. In the event of a loss upon the property so insured, who handles the loss?

A. The direct-writing company.

Q. Do the reinsuring companies have anything to do with the adjustment and settlement of the loss with the person insured?

A. No, sir.

Q. The field supervision and the inspection expense and so on of that particular risk so taken, who undertakes that? The direct-writing Company or the reinsurers?

A. I would say the direct-writing company.

Q. Is the policy of the direct insurance company pertaining to all of the adjustment and settlement of losses and so on, is that the general and the universal custom in such re-insurance cases?

A. So far as I know.

[fol. 231] Q. To clarify another feature of this matter about which you have been interrogated, you were asked about premiums coming into your hands thirty, sixty and ninety days after the same were written. Did you mean by your statement to carry the idea that such a credit of thirty, sixty or ninety days was given as a matter of general custom to the person insured?

A. No, sir, to the agent.

Q. What did you mean by it, then?

A. To the agent himself.

Q. And whether the agent collected at the time of the delivery of his policy or give a credit within the limit of thirty, sixty or ninety days, or both, that is not a matter of concern of yours, I judge?

A. No, sir.

Q. In other words, that is a credit extended to the agent whether he does or doesn't collect the premiums in the interval?

A. Yes, sir.

Q. You know enough about the activities of your company in the fire department to know the basis on which that

business is conducted in a general way, as to extension of credit, I mean?

A. I don't know that I could answer that.

Q. Now, in the interrogation, if the court please, of this witness, counsel has interrogated the witness as to the insurance in the future of the application of given rates inclusive of a claimed change in rates occurring about the year 1920, and Your Honor will recall that we made objection and insisted that this was not a proper matter for inquiry. We adhere to that same position, and I desire to interrogate this witness strictly in rebuttal to that evi- [fol. 232] dence as to what their experience was, in fact, during the year 1922, as going in answer to that portion of their evidence. We do that, still, insisting on our suggestion, and if Your Honor, upon arriving at a conclusion and a ruling upon our objection, should hold the objection well taken, then we shall consent that our evidence, about which I am now about to interrogate him, shall likewise be stricken out and disregarded. I state this theory in detail so that our position may not be misunderstood.

The Referee: I understand your position.

[fol. 233] Q. Your company is a limited stock company is it not?

A. Yes, sir.

Q. Does your company have an officer known as the president thereof? Do you know?

A. I believe not.

Q. And one reason for not knowing the name of the president is because you haven't any?

A. Yes, sir.

Mr. Jacobs: Is he sure he hasn't got one? He said he didn't know a little while ago.

Mr. Folonie:

Q. Do you know or not, whether any depletions in surplus in your company have been made up by money sent from England from time to time?

A. That I don't know.

Q. Now, you were asked about some figures by counsel on an assumption of a premium reduction of eighteen per

cent, and counsel asked you about an assumed reduction of expenses, which he used a proportion of forty-five per cent. If you reduce your premiums eighteen per cent, what would be the proportionate reduction as related to premiums or expense items?

A. I don't think I understand that question, as you put it.

Q. Well, if you were going to assume an eighteen per cent reduction of premium income for any reason, what pro rata reduction of expenses would you make if you undertook to make such an arbitrary calculation?

A. I would say eighteen per cent.

[fol. 234] Q. Now, your attention was called to a difference of some $9,000 between the figures in your underwriting by-classes statement and the figures as given by you in total. Does your underwriting by-classes statement, in fact, contain a report of all of the premiums income of your company in the State of Missouri?

A. Underwriting exhibit?

Q. Yes.

A. I believe it does.

Q. Well, does it include—for example, does include sprinkler leakage?

A. I couldn't state that without referring to the form.

Q. Do you recall—does your company—did it during that period write, use and occupancy insurance?

A. Yes, sir.

Q. Do you know if that was or was not reported in your underwriting by-classes statement?

A. I believe it is.

Q. I think the automobile, you have already mentioned the facts about that.

A. Yes.

Q. Now, on the back of this underwriting by-classes statement appears the caption "Expenses," and under that appears various items of supposed expenses. In footing those figures on the underwriting by-classes statement, did you undertake to put in all of the expenses of your company in the State of Missouri on the back of that statement?

A. Yes, sir.

Q. That is, irrespective of whether it related to the underwriting by-classes or the unregulated classes, so called?

A. Yes, sir.

[fol. 235] Q. You undertook to put them in the—of the expenses on the back, did you?

A. Yes, sir.

Q. Paid or incurred on the back of that?

A. Paid.

Mr. Folonie: In this connection, we have had the witness read partially from page 10 of this blank, if the court please, and I will offer in evidence that printed page of the annual statement which is considered as issued by the defendant, and filled out by the various companies, so that we may have it for reference in the trial.

The Referee: Very well. I would suggest you read the heading of that page.

Mr. Folonie (reading): "Page 10. Annual Statement of the blank." Under the line, "(Write or Stamp Name of Company.)"

"Underwriting and Investment Exhibit, Showing the Source of the Increase and Decrease in Surplus During 1921."

The Referee: Read the title on the outside.

Mr. Folonie: And the outside of it reads: "Missouri Annual Statement of the blank. Fire Insurance Company of blank in the State of blank To the Superintendent of Insurance of the State of Missouri, For the Year Ending December 31, 1921. Hugh Stephens, Jefferson City. Stock Fire, 1921: Special attention is called to the Instructions to Companies on inside of the front cover, 1921."

(Which said exhibit was at the time marked by the reporter as "Plaintiffs' Exhibit No. 1.")

[fol. 236] PLAINTIFFS' EXHIBIT No. 1

Annual Statement of the —— ——
(Write or Stamp Name of Company)

Underwriting and Investment Exhibit Showing the Sources of the Increase and Decrease in Surplus During 1921

		Gain in surplus	Loss in surplus
Underwriting Exhibit—Premiums:			
1. Total Premiums per items 17 and 18 page 2, $— less $— per item 30, page 3	$		
2. Add Unearned Premiums Dec. 31, 1920, per item 4, of last year's exhibit			
3. Total	$		
4. Deduct Unearned Premiums Dec. 31, 1921, per item 19, and $— reclaimable on perpetual insurance, per item 20, page 5			
5. Premiums Earned during 1921	$		
Underwriting Profit and Loss Items:			
6. Gain from Agents' Balances previously charged off, per item 35, page 2, $—, and from other underwriting income, $—, per Income Exhibit page 2 (a)	$		

Underwriting and Investment Exhibit—Continued

			Gain in surplus	Loss in surplus
7.	Loss from Agents' Balances charged off, $—, and from other underwriting disbursements, $—, per Disbursement Exhibit, page 3, other than losses and expenses per items 14 and 23 of this exhibit (a)			
8.	(b)——from items 6 and 7	$		
9.	Agents' Balances and Bills Receivable Not Admitted Dec. 31, 1920, per item 10 of last year's exhibit, $—.			
10.	Agents' Balances and Bills Receivable Not Admitted Dec. 31, 1921, per items 34, 35, and 36, page 4, $—.			
11.	(b)——from items 9 and 10			
12.	(b)——from Underwriting Profit and Loss Items	$		
13.	Underwriting Income Earned During 1921		$	
	Losses:			
14.	Losses paid, per item 13, page 3	$		

15. Deduct Salvage and Reinsurance Recoverable Dec. 31, 1921, per items (a) ——— ———, page 4

16. Balance $

17. Add Salvage and Reinsurance Recoverable Dec. 31, 1920, per item 15 of last year's exhibit

18. Total $

19. Deduct Unpaid Losses Dec. 31, 1920, per item 21 of last year's exhibit

20. Balance $

Underwriting Expenses:

23. (c) Underwriting Expenses paid during 1921, per Disbursement Exhibit, page 3 $

(a) Give statement Number of each item or portion thereof included herein.

(b) Write "Gain" or "Loss."

(c) In order to secure uniformity in the reports of the various companies, all companies are directed to include in this item all disbursements except Payments to, per item 13, page 3; Agents' Balances chargeable per item 38, page 3, Repairs, Expenses and Taxes on Real Estate; such other Taxes and Fees as apply to Investments and Personal Property only; Dividends to Stockholders; Deposit Premiums Returned; Loss on Sale or Maturity and Decrease in Book Value of Ledger assets, and such items if any, as are known to apply exclusively to the assets of the company and to deduct from the total of said items as Investment expenses one-eighth of one per cent of the Mean invested Assets, viz: Real Estate owned, Mortgage Loans, Collateral Loans, and Stocks and Bonds owned.

Underwriting and Investment Exhibit—Continued

		Gain in surplus	Loss in surplus
21. Add Unpaid Losses Dec. 31, 1921, per item 14, page 5			
22. Losses Incurred during 1921	$		
24. (a) Deduct Underwriting Expenses unpaid Dec. 31, 1920, per item 27 of last year's exhibit			
25. Balance	$		
26. (a) Add Underwriting Expenses unpaid Dec. 31, 1921, per Liability Exhibit, page 5, viz:			
27. Underwriting Expenses Incurred during 1921			
28. Underwriting Losses and Expenses			
29. (b)——from Underwriting during 1921, (Carried forward)		$	$

(a) Give statement Number of each item or portion thereof included herein.
(b) Write "Gain" or "Loss."

[fol. 237] Mr. Folonie:

Q. Did you, during the five years in question, report any figures in your annual statement to Missouri of earnings on unearned premiums or earnings on unearned premiums reserve?

A. For the interest earnings on unearned premium.

Q. All right. And what were the figures so reported by you for the different five years? Give us the five figures, please.

Mr. Jacobs: That is interest on unearned premium reserve?

Mr. Folonie: Yes.

The Witness: I have those here. 1921, $11,898.96.

Mr. Folonie:

Q. Where you reported it, you reported it on underwriting exhibits, is that correct?

A. Yes.

Q. You did report it in some form? A. Yes.

Q. All right, give us those next figures?

A. 1920, $10,469.14; 1919, $7,971.46; 1918, $7,717.14; 1917, $7,763.60.

Q. All right. Now, how did you make up those figures, or how did you calculate them?

A. I took the assets for the company outside of the real estate; I took the amount of the interest shown in the annual statement; found out the rate of interest of assets earned; then took the portion of the unearned premium applying to the State of Missouri and the premium basis, and figured the interest on that amount at the rate arrived at from the first calculation.

[fol. 238] Q. Well, is the conclusion so reached in your opinion a correct conclusion?

Mr. Jacobs: One minute. Defendant objects to that as calling for an improper conclusion of this witness.

The Referee: Overruled.

(To which action and ruling of the referee the defendant, by counsel, then and there at the time duly excepted and still excepts.)

The Witness: That was the only basis that I could understand—as near as I could figure.

Mr. Folonie:

Q. To get at it in another way; is that a good way to figure it as you know how?

A. I think so, yes.

Q. What do you say, as to whether, from an accountant's viewpoint, it is strictly correct or incorrect?

A. There is no way to determine its correctness.

Q. Have you any way of determining how much your unearned premiums from Missouri were invested and how much were uninvested?

A. No, sir.

Q. Or how much of the invested funds of your company are unearned premiums or how much are something else?

A. No, sir.

Mr. Folonie: That is all.

Recross-examination by Mr. Jacobs:

Q. Those figures you just gave, Mr. Toles, did not take into consideration any other earnings except interest on unearned premium reserve?

A. Just the interest.

Q. And that is all?

A. Yes, sir.

Q. And it is based upon a calculation, and allocated to Missouri?

A. Yes, sir.

[fol. 239] Q. Now, with reference to the contribution to surplus that was asked you, I believe you said you didn't know anything about that, didn't you?

A. Yes, sir.

Q. In figuring 1922, you did not have your figures for the expenses?

A. No, sir.

Q. Did you figure the premiums earned or paid? Were your figures for earned or paid premiums?

A. For the premiums written.

Q. And did you figure the losses paid or incurred?

A. Those were losses paid. Also losses outstanding. They were all three given. Losses paid and losses outstanding at the end of the year.

Q. Does your figure constitute the incurred losses?

A. Not without taking out the losses outstanding at the beginning of the year.

Q. Did you do that in those figures you gave just now?

A. No.

Q. You did not do that?

A. Simply called it the paid loss.

Q. Did you figure you could arrive at a correct result by counting the paid losses for 1922?

A. No sir.

Q. Why did you give them?

A. Because you asked me for them.

Q. But when you gave them you didn't give them with any idea of arriving at an accurate result?

A. No, sir.

Q. With reference to your blanks you have identified here, the blanks contain places for all information with reference both to incurred losses and paid losses, don't they?

A. Yes, sir.

[fol. 240] Q. And the underwriting blanks only for paid losses? Don't they?

A. The underwriting blanks?

Q. The underwriting blanks that you fill out each year.

Mr. McKee: The report of underwriting experience.

A. Losses paid.

Mr. Polonie:

Q. Losses paid. That is in the underwriting experience, isn't it?

A. Yes, sir.

Q. And in the annual statement report, there is both losses paid and incurred losses? Has intimation on both of those subjects, hasn't it?

A. You mean on the exhibit?

Q. Yes, for the annual statement report.

A. For the State of Missouri?

Q. Yes.

A. Yes, sir.

Q. So in the one it covers them both, and in the other just the paid losses, namely, the underwriting experience?

A. Yes, sir.

Q. With reference to re-insurance, I believed you testified that the loss, if any, would be handled by the parent company, as you called it?

A. Yes, sir.

Q. However, Mr. Toles, there is an overhead expense in handling this re-insurance by the assuming company, isn't there?

A. Well, I presume so.

Q. Well, aren't there companies which do exclusively a re-insurance business?

A. I believe so.

Q. And those companies, every dollar of overhead expense that they charge, is chargeable against reinsurance, isn't it? If they do an exclusive re-insurance business?

A. You mean, all their own business.

[fol. 241] Q. Yes.

A. Yes.

Q. So you have that overhead expense and the entire overhead expense is chargeable against re-insurance for those companies, isn't it? Is that right?

A. I would say so.

Q. And you have that expense in addition to all expenses of the parent company, which you say cover every activity in the handling of the insurance, is that right?

A. I don't know just how to answer that.

Q. You testified, didn't you, that the parent company wrote the insurance?

A. Yes.

Q. Maintained the field supervisors?

A. Yes.

Q. Made the adjustments?

A. Yes.

Q. Made the provisions for the conduct of the insurance business?

A. Yes.

Q. Handled the losses, if there were any?

A. Yes.

Q. Paid all those expenses, in other words, that went to the writing of that insurance?

A. Yes.

Q. Then, if there was re-insurance, it was a part of the the overhead expense that they paid?

A. Yes, sir.

Q. And if they were engaged exclusively in re-insurance, their overhead expenses were charged entirely to re-insurance?

A. Yes.

Q. So in that instance it is bound to be a pyramiding in cost, isn't it?

A. No, sir.

Q. The fact of the matter is, you can't get away from it, can you?

A. I will admit that.

Q. You don't agree with the method of taking the premiums collected for a year over a 5-year experience, and [fol. 242] calculating the losses paid each year, and the expenses paid, as arriving at an underwriting experience? You don't agree with that?

A. No, I do not.

Q. Because you said there was a possibility of what?

A. I don't know what you mean.

Q. Well, you gave a reason to Mr. Folonie.

A. But not of any question like that.

Q. You did not? Have you a reason to objecting to that?

A. I would say it doesn't reflect the true condition of the company.

Q. Why?

A. Because you are taking into consideration the unearned premium part of your premium.

Q. I am taking into consideration the premiums that are paid, am I not?

A. Yes.

Q. So much money was paid to the company in the year?

A. Yes.

Q. So many losses to the company?

A. Yes.

Q. And so many expenses were paid?

A. Yes.

Q. Those are all definite figures, aren't they?

A. Yes.

Q. Do you say that that wouldn't reflect the experiences of that company over a period of five years by taking each year in that portion?

A. It would not reflect their profits.

Q. It would not reflect? Why not?

A. Because a part of that premium is unearned, and it remains as a liability. The company might have to return it. Suppose the company became insolvent; it would have to return it.

Q. If they were insolvent, there wouldn't be much paid back, would there?

A. No, there might be.

[fol. 243] Q. Usually where they are insolvent they don't get much back on the dollar, do they?

A. This is a liability just the same.

Q. But over a 5 year experience, isn't that the best way of arriving at it?

A. No, sir.

Q. You prefer the other system of incurred losses and incurred expenses?

A. Yes.

Q. But you say over a wide scale of business, that wouldn't reflect the true condition?

A. Possibly not.

Q. Now, those figures which you gave for 1922, took into consideration all non-regulated insurance too, didn't they?

A. Yes, sir.

Q. You say your method of figuring is in general use?

A. Yes, sir.

Q. By other companies?

A. Yes, sir.

Q. Didn't you testify yesterday you didn't know what the other companies did or how the other companies figured their experience?

A. I did.

Mr. Jacobs: That is all, I believe.

Redirect examination by Mr. Folonie:

Q. I want to call your attention to one phase of this matter, Mr. Toles. You made some admission as to how your reports were made on underwritings by classes, and that was very general, so I want to bring out a point of distinction, if it exists, to avoid confusion. Were your reports of underwriting by classes made on the same basis during each of the five years, 1917 to 1921, inclusive?

A. No, sir.

Q. Will you state the differing basis on which they were made at different times?

A. The 1917—1918 report called for net premiums and [fol. 244] losses. Net premiums and losses less return premiums and re-insurance, of the companies authorized to do business in Missouri. The other years called for premiums less return premiums and disregarding re-insurance, either ceded or assumed.

Mr. Folonie: That is all.

Mr. Jacobs: That is all.

The Referee: Mr. Toles, I want to get a sort of bird's eye view of the situation if I may, for my own enlightenment. I wish you would enumerate the sources from which your company derives revenue.

A. I would say from the writing of insurance.

The Referee: Q. These premiums?

A. Premiums; and investments.

The Referee: Q. From investments?

A. Yes, sir.

The Referee: Q. Any others?

A. I am not in a position to state that. I have nothing to do with that part of it.

The Referee: Q. I am speaking just of your general experience in the insurance world, so I——

A. I don't know of any other sources of income.

The Referee: Q. Salvage? A. Salvage would become a paid item and treated as a reduction of losses.

The Referee: Q. For what purposes do the expenses arise?

A. For the obtaining of business. So far as I know, possibly the expenses of handling the investments.

[fol. 245] The Referee: Q. And your overhead office expenses?

A. Yes, sir.

The Referee: Q. Now, you divide premiums, if I understand, into written, earned and unearned premiums? That is, you take the whole subject of written premiums and classify written premiums into two classes, the earned and the unearned?

A. Yes, sir.

The Referee: Q. And you treat expenses of two classes; paid and incurred expenses?

A. Yes, sir.

The Referee: Q. Now, have you any means of ascertaining in the course of a period of years the exact amount of money actually received by the company on premiums for a certain year?

A. Do you mean by that the actual figures collected?

The Referee: Q. Yes.

A. You could approximate that by taking your entire writings for a year and adding the amount of outstanding balances that you had at the beginning of the year, and deducting the amount you had outstanding at the end of the year, uncollected balances. In order to do that you would have to know the amount of commissions that were included in your balances as a deduction from the amounts to be collected from the agent, in order to get your gross premium collections.

The Referee: Q. Have you a method of determining the exact net premiums reserved in a given year?

A. You mean, collected?

The Referee: Q. Collected.

A. No, sir.

The Referee: Q. Have you any method of determining what the net earnings of the company were from all sources [fol. 246] or from any particular source?

A. I haven't, no, sir.

The Referee: Q. In a given year? Has the company any such method, to your knowledge?

A. I don't know how they would do that. That is a matter entirely out of my work.

The Referee: Q. Then how do you arrive at the conclusions that the company receives a profit in a given year, or suffered a loss in a given year?

A. That is based entirely upon what is called in our office "underwriting profit."

The Referee: Q. How do you determine the amount of the underwriting profit?

A. By taking the premiums and deducting from that the incurred losses and expenses and the difference in the amount of the reserve unearned.

The Referee: Q. Now, if I understand it, incurred losses is a more or less elastic figure subject to change upon final adjustment and not definitely determined until payment is made?

A. Yes, sir.

The Referee: Q. There comes a period, though, does there not, when all losses become definite?

A. Yes, sir.

The Referee: Q. And then you deduct the amount actually paid?

A. Yes, sir.

The Referee: Q. The remainder is your net profit?

A. Yes, sir.

The Referee: That is all.

Mr. Folonie:

Q. Your element of possible variation, as indicated by the court's question, would arise in the difference between [fol. 247] the estimated portion of the incurred and unpaid expenses which would be varied by the results as they terminated, in fact?

A. Yes, sir.

Q. And the larger portion of that incurred loss, however, would be that which had already become fixed and determined during the course of the year?

A. Yes, sir.

Q. And in that part of your incurred losses there would not be any element of possible future error?

A. No, sir.

Q. It would only be in that part which had become incurred but had not yet been paid on December 31 of a given year?

A. That is the only time.

Mr. Folonie: That is all.

Recross-examination by Mr. Jacobs:

Q. Now, Mr. Toles, I believe you said that the question of incurred losses and the uncertainty which surrounds a matter of that kind until they are definitely paid, is finally definitely settled?

A. Yes, sir.

Q. But at the end of a 5-year period where you have a definite period, there is an unsettled portion of your incurred losses?

A. That applies to the losses outstanding at that particular time.

Q. Yes, sir; and when you figure the end of your 5-year period, you still have a computation to make, haven't you?

A. Yes, sir.

Q. And the same is true of incurred expenses, isn't it?

A. Yes, sir.

Q. And the same is true of earned premiums?

A. Yes, sir.

[fol. 248] Q. Now, do I understand you to tell the referee that your books won't show how much cash you took in hand in a given year?

A. No, sir.

Q. They won't show that?

A. I didn't say that.

Q. Well, can you show, then, how much money you took in in a given year in the way of paid premiums?

A. I can show you how much money we took in—agency balances; yes, sir.

Q. Then you can give the definite information from which you might base a computation of how much money in the way of premiums you collected in a given year; can't you?

A. Well, it would be a long, tedious process. I don't know whether it could be accomplished or not.

Q. You said a moment ago you thought it could.

A. Accurately, though.

Q. Have you a system of bookkeeping by which you could tell how much cash came into your office?

A. How much cash came in in figuring agents' balances. There is an element of commissions, etc., in there.

Q. But you have to [illegible] an account each thirty days setting up all commissions, expenses and stuff of that kind; haven't you?

A. Yes, but this has all got to be considered and figured out.

Q. Of course, you have a debit and credit side to your book, haven't you?

A. Yes.

Q. And by those debits and credits, can't you tell the actual amount of cash that comes in?

A. The amount of cash; yes.

Q. And can't you tell the amount of premiums that came in?

A. Not very well.

[fol. 249] Q. But it could be done?

A. Yes.

Q. Now, when you figure profits, do you figure the gross net premiums, or do you figure the investment from the capital stock of your company?

A. The profits I figured for our company are based entirely upon underwriting profits.

Q. You, of course, don't take into consideration the other earnings, though?

A. No.

Q. Now, Mr. Toles, you are an accountant, you said?

A. Yes.

Q. Do you know of any other business where profits are figured from its total income instead of its capital stock?

A. I don't know anything about that.

Q. Have you had any experience along other lines except insurance accounting?

A. No, sir.

Mr. Jacobs: I think that is all.

Mr. Folonie: That is all.

(Witness Toles excused.)

The Referee: Adjourned until 2 o'clock.

(Whereupon an adjournment was taken until 2 o'clock that afternoon, the same being Thursday, June 7, 1923, at which time the parties reconvened and the following proceedings were had:)

M. M. Hendele, of lawful age, being produced and sworn as a witness on behalf of the plaintiffs, was examined and testified as follows:

Direct examination by Mr. Hogsett:

Q. State your name to the referee.

A. M. M. Hendele.

[fol. 250] Q. Where do you live, Mr. Hendele?

A. Chicago.

Q. What is your occupation?

A. Accountant.

Q. By whom are you employed? What companies?

A. The western department of the Mechanics Traders Insurance Company.

Mr. Barker: What is that company?

A. The Mechanics & Traders Insurance Company, and the National Fire Insurance Company of Hartford.

Q. Where is the home office of the Mechanics & Traders?

A. New Orleans, Louisiana.

Q. What department is maintained in Chicago?

A. Western department.

Q. Over what states does that department have jurisdiction?

A. Twelve of the middle western states.

Q. Including the State of Missouri?

A. Yes, sir.

Q. What is your official or other connection with the company; Mechanics & Traders Insurance Company? Just what is the title of your office?

A. Accountant.

Q. As accountant, do you have under your immediate supervision and control the making of records showing premiums, losses and expenses of your company in the State of Missouri for the 5-year period of 1917 to 1921, inclusive?

A. Yes, sir.

Q. And did you have during those years?

A. I did.

[fol. 251] Cross-examination by Mr. Barker:

Q. Mr. Hendele, your company is a New Orleans company incorporated under the laws of Louisiana?

A. As far as I know; yes.

[fol. 252] Q. What is its capital stock during this period? Do you remember?

A. $200,000, as I remember it.

Q. It is just an ordinary business insurance corporation, I understand?

A. Yes.

Q. Now, are you familiar with the method of the insur-

ance business; that is, do you understand the nature of the insurance business, how the business is conducted. You are familiar with that, are you not, in a general way?

A. In a general way, yes.

Q. Now, then, insurance, for instance in Missouri, is usually written by an agent in some part of the state?

A. Yes.

Q. Now, that agent receives a commission for writing that business. Do you know the amount of commissions they are paid?

A. Yes.

Q. They run from 15 to 30 and 35 per cent?

A. 15 to 30 per cent.

Q. Yes. 15 to 30 per cent. Now, in some instances there is a broker's commission added to that, is there not? For instance, take chain stores, oil stations, depots—wherever insurance is handled by a broker in Chicago or St. Louis, there is an added brokerage commission in those instances, is there not?

A. I don't know anything about that.

Q. Well, you understand that if a broker in Chicago has all the stations of the Santa Fe Railroad through Missouri, that he could brokerage that business and handle it through your company, for instance—every station in the state—could do that if he desired?

A. All I know is that we pay from 15 to 30 per cent to agents.

[fol. 253] Q. I see. Now, then, your agents in St. Louis get the highest commission the 30 per cent?

A. Yes.

Q. Have you any reason, has your company any stated reason why agents in St. Louis receive a higher commission than agents in Kansas City for the same work?

A. I don't know.

Q. You don't know about that. Been that way a great many years?

A. Yes.

Q. Are you familiar with the commissions paid in other lines of business; for instance, take farm loan business, do you know what that would run, just as a matter of per cent?

A. I do not.

Q. Take the life insurance commission; do you know how that runs?

A. No, sir.

Q. Now, insurance commissions are paid each year; that is, if a man takes out a policy for one year and it is renewed a second year, and a third and fourth and fifth and so on, the agent gets a commission, whatever it may be, each year as that policy is renewed?

A. Yes, sir.

Q. So at the end of the fourth year, the agent would have received 100 per cent—if he was getting 25 per cent a year, of course?

A. Yes, if you look at it that way.

Q. Your company regards that as a good business method, of paying commissions of that kind—have you figured on that, or do you attach any importance to the amount which you pay?

A. Well, I don't go into that feature.

[fol. 254] Q. And you don't yourself have anything to do with that?

A. No, sir.

Q. Now, then, after the insurance is written by your agent, he makes a report, as I understand, to your office here in Chicago for the Missouri business; is that right?

A. Yes.

Q. And upon his report, a policy is issued from Chicago;

A. Yes, sir.

Q. Some of your agents in Kansas City and St. Louis have the power to issue policies?

A. Yes.

Q. When that policy is issued, you return it to the agent or to the insured?

A. You ask me whether the agent has the power?

Q. Yes. Whether your company returns it to the agent or to the insured, when you write it here in Chicago?

A. I understood your question. The agents issue the policies, the local agents.

Q. In all places issue the policy?

A. Yes.

Q. Do you have a copy of that policy in your office?

A. In the form of a daily report; yes, sir.

Q. Now, then, the insurance is not remitted for until sometime later?

A. The agents make usually a monthly statement.

Q. Yes, that is the usual practice. He renders an account at the end of a month and remits on that basis.

A. Yes.

Q. What per cent of the business—would you just give me an estimate, if you can, that you would receive your premiums for your insurance written at the end of thirty days?

A. Well, I would say about 50 per cent or better.

[fol. 255] Q. 50 per cent or better?

A. Yes, sir.

Q. Now, then, if a man in one of your towns goes to one of your local agencies and applies for insurance, it is given him. Now, a statement is sent to him in the ordinary course of business, say Kansas City, St. Louis, or elsewhere. Now, assume that he carries that insurance for three months and he has not paid for it during that length of time. He has the right of cancellation, then, without paying; has he?

A. No, I wouldn't say that he had.

Q. Have you ever known of your company collecting on cancellations before the premiums were paid? That is not done, is it?

A. You mean what?

Q. In case a policy is carried two or three months and the insured cancels?

A. Yes.

Q. They don't make any payment upon that cancellation? If you cancel, having received the premium, you would return part of it; but if the insured cancels, he pays nothing?

A. I wouldn't put that in a broad way.

Q. Well, have you ever known of him paying?

A. Yes, sir.

Q. What would he pay: His pro rata part of that?

A. Yes, sir.

Q. Suppose at the end of three months he would cancel and pay nothing, he could then go to another company in the same town and get another policy for three months and pay nothing, and continue indefinitely, so that the result might be that he would carry insurance for years and years [fol. 256] and pay nothing: is that right?

A. That is getting away from accounting. I really don't see that.

Q. You don't know the practical side of that?

A. No, sir.

Q. Now, then, in Missouri you keep a statement of the premiums paid and you distinguish between premiums written and premiums paid?

A. I don't keep any record of premiums paid.

Q. Of premiums received?

A. I keep a record of premium written.

Q. Premiums written?

A. Yes.

Q. Now, a premium written, of course, may not be paid?

A. That is true.

Q. That is, as in the illustration I was just giving you of where there is a cancellation. That would be the only thing that would keep it from being paid, would it not?

A. Yes, sir.

Q. Now, then, at the end of the year you necessarily have premiums in which business has been written and premiums have not been paid; is that right?

A. Yes, that is true.

Q. And you call those unearned premiums or unpaid premiums?

A. They are unpaid premiums.

Q. Now, when—the insurance is written, as I understand it, for a definite length of time, say one, two, three, four or five years; is that right?

A. Yes.

Q. And the premium invariably paid in advance?

A. Yes.

[fol. 257] Q. So that if a man takes out a policy of insurance on the 1st of January, 1917, for one year, and pays for it on that day, you have received the total sum for which you have agreed to carry his risk for one year?

A. Yes, sir.

Q. Now, when you receive that money a year in advance, to five years in advance, what does your company do with it?

A. I couldn't answer that.

Q. Well, did you ever see it around your office anywhere?

A. No.

Q. You are an accountant?

A. Yes.

Q. Did you ever see any checks or drafts for insurance written?

A. Yes.

Q. Well, when you get them in the office, what do you do with them?

A. Well, that money is deposited in the bank with other items.

Q. In the same local bank in Chicago?

A. Yes.

Q. Some of it sent to your New Orleans office?

A. If we have reached a surplus yes.

Q. I see. Now, then, when it is deposited here and in case of a cancellation, you return a certain portion?

A. Yes.

Q. But if a man has paid a $100 premium for one year, and cancels on the 1st day of July or six months thereafter, he doesn't get $50 back, does he?

A. Not if he cancelled it, no.

Q. What does he get back if he cancelled?

A. A short-rate return.

Q. On a $100, what would that be?

A. Instead of pro-rated $50, it would be about $40.

[fol. 258] Q. Get about $40 back. The agent having received his commission, and the company getting the balance, which it would retain?

A. Understand that the agent doesn't get the commission on the full premium. He returns his portion of the commission on the returned premium as well.

Q. That is, where there is a cancellation, the agent returns a portion of the premium the same as your company returns a portion of the premium to the insured?

A. Yes, sir; that follows.

Q. Now, then, in calling your attention to your statement of earned premiums and incurred losses and incurred expenses, Plaintiff's Exhibit 10, I will ask you about two or three of those, if you will stand up here a minute, please. Now, in 1918, earned premiums were $35,000—not using anything else. Now, your incurred losses were $20,000. Incurred expenses, $10,000. Giving you a net profit in Missouri of $3,901. Now, that is figured as a profit on your income from Missouri?

A. On earned premium basis; yes, sir.

Q. Well, your income is what I mean.

A. Yes.

Q. You figure your profit on income?

A. Yes.

Q. Have you had any experience as an accountant except for fire stock companies?

A. No, sir; I have not.

Q. Are you familiar with any other branch of the business world where accountants figure a profit on income rather than a profit on money invested in the company or capital and surplus?

A. Never had occasion to go outside the insurance field.

[fol. 259] Q. I see. Now, then, 1918, showing a net profit in Missouri of $3,901. I call your attention to the following year of 1919 where you have $31,000 earned premiums as against $35,000 in 1918. You had a loss of $20,000, the same as the incurred losses, substantially, in 1918. You had expenses of $1,000 as against substantially $11,000 in 1918. Yet, with your premiums nearly the same—within $4,000—your losses and incurred expenses the same, you show a loss of $32 one year, and on the same volume of business in the same state, you show a profit of $3,901 in the other year. Is that reached from an arbitrary basis?

Mr. Hogsett: We object to that statement as an incorrect analysis of the figures from which counsel is reading; the incorrect statement lying in the fact that the volume of business or earned premium in the two years is not the same, but was substantially $3,000 apart, that representing the profit in the one year, and the absence of profit in the other.

Mr. Barker: I stated the figures right.

Mr. Hogsett: But you are assuming the volume of business is the same.

Mr. Barker: I said one was $31,000—$35,000. He understood how I stated it.

The Referee: The witness may explain his answer.

Mr. Barker:

Q. Does that represent an arbitrary classification?

A. No.

Q. Or is that an actual classification?

A. Yes.

Q. Now, then, in 1921, your earned premiums were $37,000 as only against $35,000 in 1918. Your incurred losses [fol. 260] in 1921 were $12,000 as against $20,000 in 1918. Your incurred expenses were $13,000 in 1921 as against $10,000 in 1918. Yet you show a profit that year of $11,058. How do you explain that?

A. The conditions must have been different that year.

Q. Well, certainly they must. Now, then, you only have a difference of $2,000 in your earned premiums. You have a difference of $8,000 in your favor on incurred losses. You have a difference of $3,000 in your favor on incurred expenses, and yet with those conditions, you report $11,000 profit in 1921 and only $3,900 profit in 1918. Now, where are the figures that you made this from?

A. They are assembled from the other figures you have here. They are substantiated by the books and records.

Q. Those two years can not be correct, can they?

A. Why, sure, they can.

Q. They can. Now, you figure I believe, from the earned premium basis and the incurred loss basis and the incurred expense basis rather than the premium paid basis, the loss paid basis and the expense paid basis?

A. Yes.

Q. Why do you do that?

A. Because I think that is the only proper way to examine underwriting profit.

Mr. Folonie: I thought the reporter would probably get it better then.

Mr. Barker:

Q. What do you then mean by saying that you think that is a better way to figure it? Give me your idea as to that.

A. I said I thought it was the proper way to figure it.

[fol. 261] Q. Well, tell me why.

A. Because I can't see if you have received a certain amount of cash and in a certain year, why you should determine a profit on your income when you cannot consider that all of that is yours right there. In other words, you have got an unearned premium reserve to deal with. Your

premiums are never entirely earned until your policies have expired.

Q. And who do the premiums belong to?

A. They belong to the company in the meantime.

Q. Why do they belong to the company if they are not earned?

A. Because the laws require a certain percentage of the premium income, depending upon the term and expiration of the policy, to be set aside as special reserve or a part of the surplus.

Q. Is that 50 per cent unearned premium reserve recognized by your company?

A. Yes, sir. It varies in ratios, you understand.

Q. I asked you if 50 per cent was recognized for Missouri business?

A. Not entirely; no, sir.

Q. What is recognized?

A. It will vary from 50 to 90 per cent.

Q. In accordance with fire hazards?

A. No, sir; in accordance with the term of the policy.

Q. Now, when you receive this premium then five years in advance for services to be rendered five years in the future, you say that is your money.

Mr. Hogsett: That almost calls for a legal conclusion.

Mr. Barker: Well, he said it himself. I want to get his ideas of it.

[fol. 262] The Referee: A question of law; sustained.

Mr. Barker: Well, then, I will withdraw it, if it is a question of law.

Mr. Barker:

Q. Now, what is the difference between an earned premium and an earned premium reserve?

A. We don't have that.

Q. Don't have what?

A. An earned premium reserve.

Q. You told me you have an earned premium reserve, and that you estimated it from 50 to 90 per cent.

A. We have an earned premium, but not an earned premium reserve.

Q. You have an earned premium but not an earned premium reserve?

A. No.

Q. Now, then, what is having an earned premium reserve?

A. You mean unearned?

Q. No, I mean earned.

A. No, we don't have that.

Q. The reason you don't have it is because when it is earned it is yours?

A. Yes.

Q. That is right. But when it is unearned, it is not yours; therefore, you carry it in reserve for what?

A. I wouldn't say that it is not ours. We hold it in reserve because—in case the policies are subsequently cancelled or something else happens.

Q. Well, what else besides policies being cancelled?

A. Well, the further termination of liability.

Q. What do you mean by that?

A. When you set aside 50 per cent at the end of one year and on a 1-year policy at the end of the coming year, if the [fol. 263] policy is not cancelled, that policy—that money is entirely earned.

Q. That is, you would then at the end of the second year, 100 per cent?

A. Yes.

Q. Now, then, there is a difference, I take it, from what you state, as to an unearned premium as you have stated to me, and an unearned premium reserve?

A. Yes, there is.

Q. And you stated your reasons for that, I believe, a minute ago. That the unearned premium reserve was for the protection against certain happenings?

A. Yes.

Q. And the earned premiums, how do you handle them? Do they go into reserve?

A. Why, no; no necessity for that.

Q. Because you treat them as yours?

A. Treat them as entirely earned.

The Referee: Pardon me. What is the difference in the amount, if any, between the sum of the unearned premiums and the sum total of the unearned premium reserve?

A. That amount cannot be stated in dollars and cents.

The Referee: Q. I mean in proportion.

A. The difference would come up with the ascending or descending scale of business. The unearned premium reserve is on a ratio basis which is really pro-rated. If a policy is cancelled at the request of the assured, it is cancelled short rate. He might have, for example, a $50 unearned premium reserve on a certain policy. If the assured elects to cancel that policy, we might only pay him back $40. That would account for a difference in the unearned premium and the figure set up in the reserve.

[fol. 264] The Referee: Q. Generally speaking, is the sum total in the unearned premium reserve greater or less than the total of the unearned premuims?

A. I don't believe I can answer that. I would say it varies.

The Referee: Q. Sometimes greater and sometimes less?

A. Yes.

Mr. Barker:

Q. There never would be a condition, I take it, where the unearned premium reserve could be as great as the unearned premiums?

A. Well, as of a given date, it would be pretty hard to calculate that unless you have a concrete example before you.

Q. Your unearned premium reserve, of course, comes from your unearned premiums—that is what it means?

A. Yes, sir.

Q. So the unearned premium reserve could never be greater than the combined unearned premiums?

A. It should be the exact figure as of a given date on a prorata basis, but it is—it changes almost instantly after a new policy is issued or handled.

Q. Now, then, in looking at your Exhibit No. 10, incurred losses and incurred expenses in Missouri—in starting out on the 1st day of January, 1917, you treat earned premiums as $26,964. That means that on the 1st day of January, 1917, you had sufficient insurance in force in Missouri on which premiums had been paid and on which you had rendered service up to that date, giving you that sum. That is what that means?

A. Those are premiums earned during the year 1917; terminating on December 31, 1917.

[fol. 265] Q. Your figures then would terminate December 31, 1917?

A. Yes, sir.

Q. In the absence of cancellations, you can tell at any time the total amount of your premiums, but you may have to return some of them by cancellation; is that what you mean?

A. Yes, but understand that your reserve is affected almost every minute of the day.

Q. Yes, sir. Now, then, do you recognize in your company a conflagration liability or hazard?

A. Do I recognize it?

Q. Does your company recognize it?

A. Well, I expect they do; outside of the jurisdiction of my department.

Q. Well, you are the accountant, aren't you?

A. Yes.

Q. Do your books and records show the setting aside of a certain sum of money for conflagration hazard or liability?

A. My records would not, because this is a department office.

Q. Well, if there were any such records, where would they be shown?

A. At the home office of the company.

Q. Have you ever seen any figures, data, or record of any kind which indicates that your company sets aside a specific sum to be known and treated as conflagration hazard or liability?

A. I have never seen anything.

Q. In fact you know that your company doesn't set aside any sum, don't you?

A. I don't know that they don't.

[fol. 266] Q. You don't know that they don't. Now, who makes up your incurred expenses, known as your "Plaintiffs' Exhibit 8"? Did you make this up?

A. Yes, sir.

Q. Where did you get the data for instance, of "Agents' Compensation, including brokerage;" where did you get that data?

A. That is an actual figure on the books I keep.

Q. What was that?

A. That is an actual figure on the amount paid to Missouri agents on the books I keep.

Q. Well, now, using the word "brokerage;" what does that mean? "Including brokerage?"

A. Well, that doesn't, I might say, affect me because I deal with agents.

Q. Well, but you make a report to the state here of "Agents Compensation, including brokerage." Now, is there any brokerage included in that?

A. No, sir.

Q. Your company has no brokerage account?

A. No, sir.

Q. And your company has no charge for rent against Missouri, I notice, meaning by that, that you pay no rent in the State of Missouri?

A. That is it exactly.

Q. Now, you charge in your expense account "Federal Taxes" to the State of Missouri; how did you apportion that?

A. Those figures at the time that law was in effect were calculated monthly, and that figure is the federal tax of 1 per cent of the Missouri direct premiums as reported to the government.

Q. And that is the only federal tax—you don't include income tax or excess profits tax in this report?

A. Well, that would be an allocated expense, and appears in the lower part of that statement.

[fol. 267] Q. Well, do you allocate that to Missouri?

A. Yes, sir.

Q. And does your company recognize that that is a corporation expense or an underwriting expense?

A. Why, an underwriting expense.

Q. You treat it as an underwriting expense?

A. Yes.

Q. Now, so that I may understand your system. Take a charitable gift. In your system of accounting, would you treat that as an operating expense or an underwriting expense?

A. I have never seen anything like that.

Mr. Folonie: Not with your company?

A. Not with my company.

Mr. Barker:

Q. As an accountant, are you prepared, or are you familiar with proper method of where that would be charged?

A. I have never had the subject come up.

Q. Of the apportioned expense you reached from taking the expenses of your company throughout the United States and the amount of business done throughout the United States, and as the business and expenses total, you make proportionate charge against the business done in Missouri for the apportioned expense of Missouri?

A. I have done it in substantially the same way. I have done the ratio of the Missouri premiums to the——

Q. (Interrupting.). What kind of premiums?

A. The gross net premiums.

[fol. 268] Q. Earned or unearned?

A. On a written basis.

Q. On a written basis?

A. Yes, because your expenses that I have access to of the company, are on a paid basis—one follows the other.

Q. So you paid that on written premiums and incurred expenses?

A. Substantially so.

Q. Now, if the incurred expenses eventually did not equal the paid expenses or were higher or lower, your calculations would necessarily to that extent be erroneous?

A. No, I don't see that it would be—over a period of years. It might fluctuate from year to year, depending on the reserve set up for expenses at the end of the year.

Q. Now, your showing here is that your company, as the years go by does more business in Missouri as the state grows and as your company grows and you naturally expect to do more business?

A. Yes.

Q. For instance, in 1917, your earned premiums were $26,000; in 1921, your earned premuims were $37,000. Your business was increasing?

A. Yes.

Q. Therefore, if you took an earned premium basis at the beginning of 1917 and at the end of 1921, your earned and unearned premiums both will be largely in excess of your earned and unearned premiums at 1917?

A. Well, that would be the natural of events.

Q. Certainly. So that in figuring on an earned basis then rather than a paid basis, that would increase your expenses in Missouri and limit your profit in Missouri. That would be the effect of it?

A. Naturally so.

Q. Yes. And that is why you do it?

A. No, sir.

Q. It is not?

A. No, sir.

[fol. 269] Q. Just happens that way?

A. Well, I can't control the result.

Q. I see. You are not the manager, managing officer or president of this company. You don't tell me that that is a proper system of accounting do you?

A. I do.

Q. You do?

A. Yes, sir.

Q. Don't you think it would be better for you to start out on the 1st day of 1917 and say that on this day we received $100, and next day we received $50, and right on through each day of the year, and at the end of the year total it up and know just exactly every dollar which you had received and put in the bank that year—wouldn't that be a better system?

A. Theoretically, that would be an ideal way to conduct the business, but——

Q. (Interrupting.) Isn't that——

Mr. Hogsett: Wait a minute. He says "but—" Let him go ahead.

Mr. Barker: Yes.

A. (Continuing:) But there is a certain income that you have that is not entirely earned the minute you get it; consequently, you have got to set up a reserve for some cash that you receive today for what is going to happen next year.

Mr. Barker:

Q. Can you tell me another business institution such as banks, stores, loan companies or otherwise that handle their business like this?

A. I don't know. I have not—I have an opinion.

Q. All right, who do you think handles it this way?

A. I honestly believe that there is not any company [fol. 270] but what has some reserve to take care of emergencies. Take your merchantile houses, your automobile concerns. There isn't any one of them in my mind but what has a special reserve to take care of contingencies.

Q. Yes. And if you mark down on a book the sum of money which you take in each day during the year, and got the money and put it in the bank, that, of course, would prevent you from carrying a reserve?

A. Yes, but I wouldn't call that good business judgment.

Q. Yes, but it would at least prevent you from carrying a reserve?

A. No.

Q. Why couldn't you carry the reserve the way I am talking to you then?

A. Because if you mingle all your funds in one pot, you are very apt to spend them for the wrong purpose, and consequently, that is the necessity for setting aside a reserve for special purposes.

Q. Of course. I am not really asking you about reserves. I have no objection to discussing it but if you kept track of your money each day in as many classifications as you desired, put part of it in one fund and part of it in another, call a certain part of it "reserve" or any thing else, that wouldn't interfere with your doing that at all, would it?

A. You are getting down to an impractical thought.

Q. That is just because you, as an insurance expert, have been taught that that was impracticable; isn't that it?

A. No, I wouldn't say that.

Q. Who first told you that it was impracticable?

A. Because I have thought these things out myself.

Q. You have thought those things out yourself?

A. Yes.

[fol. 271] Q. And you reached the conclusion that it would not be wise to carry insurance on a paid basis and to carry expenses on a paid basis, but rather carry insurance—premiums, on an earned basis, and expenses on an incurred basis—that is a result of your investigation?

A. Because you can't lose sight of the fact that you must carry a reserve for your liability to come—in accordance with your various state laws.

Q. Yes, sir. And your idea is that if you take in $100,000

in 1917 and got it on the first day of that year and put it in the bank, that you can't carry it as a reserve if you do business this way. Now, why can't you?

A. Because the law specifically says that you must set aside a part of that income as a reserve.

Q. Where, then, on the 1st day of January, 1917, when you get $100,000, why couldn't you set aside $50,000 for a reserve?

A. Because you can't be making those calculations every minute of the day, and neither would it be practicable to take in $100,000 and say $50,000 is yours, because you don't get the $100,000. The agent gets part of it.

Q. Well, then, cut it down to $10,000. Maybe you might get $10,000. How would that do?

A. Well, what I mean to say is you don't get the 100 per cent.

Q. Oh, I realize you have certain expenses, but do you tell me there is a difference with reference to keeping a reserve whether the insurance is treated as paid or earned; that there is a difference in keeping a reserve?

A. Surely. You can't take your entire income and say it is all yours for a minute. It is yours in a sense, but [fol. 272] you have to do something else with it. You can't use it to pay losses and expenses with completely.

Q. Couldn't you use it one way just as well as another? That is, whether you treated it as paid or earned?

A. No.

Q. Now, tell me why have you treated it on a paid basis if you couldn't set it aside, couldn't set aside a certain portion of it for a reserve?

A. You consider your premiums received, and then you make your allocation—your calculation later for the amount you must set up for a reserve.

Q. Now, I notice that your company does only a fire and lightning, tornado, windstorm and cyclone business?

A. What year is that?

Q. Well, that seems to be for all years—no you did some hail business?

A. We have written some hail business in some years.

Q. You apparently have no business yourself classified as "all other classes"?

A. I am not sure—that is correct.

Q. Then you do no automobile business?

A. Not in that period.

Q. Not during those five years?

A. Yes, sir.

Q. Now, different insurance is written at a different premium. For instance, collision insurance with reference to automobiles would be a different risk than insurance on a house or household goods—different classification entirely, wouldn't it?

A. Well, I can't answer that because that is not—doesn't come under the jurisdiction of accounting.

[fol. 273] Q. Oh, that has nothing to do with accounting. You are limiting your testimony to strictly accounting?

A. I collect the statements as they appear on the daily report.

Q. And you know nothing about whether one class if insurance is charged a higher rate than another?

A. Oh, no.

Q. No, sir. Now, where did you get your apportioned expenses and your apportioned earnings for Missouri?

Mr. Hogsett: What do you mean, "apportioned earnings"?

Mr. Barker: I mean your apportioned earnings on your capital and surplus, and your unearned premiums which you report.

Q. Where did you get those?

A. I made no calculation of the capital and surplus.

Q. And you made an apportionate earning of unearned premiums, have you?

A. No, sir.

Q. Then you don't apportion in these reports anything to the State of Missouri except expenses?

A. Yes.

Q. Therefore, your theory is that Missouri will pay all of these expenses, and you have carefully and properly apportioned it to Missouri?

A. Yes, sir.

Q. Now, why don't you apportion earnings on unearned premiums from Missouri? You did in your annual statement to Missouri, didn't you?

A. No, sir.

Mr. Hogsett: Underwriting experience.

Q. For instance, the underwriting sheet or underwriting experience. Do you make that out, that goes to Missouri? [fol. 274] A. It is complied under my supervision.

Q. In that, if you remember, and if you don't remember it's all right—in that, you apportioned to Missouri a certain part or portion of unearned premiums. You also apportioned to Missouri a certain interest in your earnings on capital surplus, did you not? Have you got it there? You know what you refer to, these calculations here?

A. Made by our home office.

Q. Oh, then you didn't make them. I misunderstood you, sir. Now, when you apportioned the home office salaries and expenses in Missouri in this company, where did you get those?

A. Those were the figures as they appear in the company's annual statement.

Q. As filed with the Missouri department?

A. As filed with the Missouri department.

Q. And in that same annual statement, as filed with the Missouri department, may be found the interest on unearned premiums and the appointment on capital and surplus—you saw that, didn't you?

A. Yes.

Q. Why didn't you tabulate that?

A. Because I don't think it has any place in determining underwriting profits.

Q. Where did you get that idea from? Who told you that—or is that your conclusion as an accountant?

A. It is a conclusion that I have come to, and I had it confirmed by others that I have spoken to.

Q. Now, then, are you familiar with the method of handling this money which your company receives in advance, known as premiums written?

A. No, sir.

[fol. 275] Q. Do you know whether it is invested or not?

A. I assume it is.

Q. You say your company is capitalized for about $200,000?

A. Yes, sir.

Q. Do you own any of its stock yourself?

A. No, sir.

Q. Do you know the value—what is the par value of its stock; do you know that?

Mr. Folonie: We object to that as immaterial and not bearing upon any proper issue.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Do you know?

A. I don't know.

Q. Then you wouldn't know its present value on the market?

A. No, sir.

Q. Do you know the president of your company?

A. Yes, sir.

Q. You were here this morning, weren't you?

A. Yes, sir.

Q. Do you have in your department, which you are compelled to consult with reference to your tabulation, a report known as "salvage report"?

A. Salvage reports are made up in connection with loss reports.

Q. Yes, sir; and you, as accountant, have charge, as I understand it, of the entire accounting system of this company in Chicago?

[fol. 276] A. Yes, sir; because the loss department and tabulating department must report to the accounting department.

Q. Now, in case—the way you handle that, I assume, is that where a piano, for instance, is burned, if you pay the full amount on it, you necessarily get that part of the piano which is left?

A. Surely.

Q. What is your method of disposing of that?

A. Various.

Q. Well, how?

A. We obtain bids from several people, and sell to naturally the one who gives us the highest price.

Q. Yes. And that reduces the loss on the amount which you paid the assured materially, depending on what you get for that?

A. Yes.

Q. Now, you take account of that, do you, under what you call "incurred losses"?

A. Yes. It would also affect your paid losses.

Q. Do you figure paid losses?

A. Yes, sir.

Q. Where is your incurred and paid losses here?

A. This gives you the paid losses in the first column with the aid of the unpaid losses gross and re insurance recoverable, I can produce them.

Q. In your Exhibit 9, first statement, "Net Losses Paid, State of Missouri"—so you have a complete record, then, each year, as to the amount of losses you actually paid that year?

A. Yes, sir.

Q. Now, when those losses are paid during that year, it is not necessary to carry any incurred losses for that year unless they lapse over into the next year, I take it?

A. Well, your understanding is correct.

[fol. 277] Q. Now, for instance, in 1917, you had paid losses $15,273. In the same year, you had unpaid losses in Missouri of $11,254. Does that mean losses which you did not get adjusted and paid, or at least, paid during that year and necessarily had to be carried over into 1918?

A. Yes, sir.

Q. Well, now the fact that you carry $11,254 in unpaid losses in 1917, doesn't mean that you paid in 1918 that sum of money, does it?

A. It may be even greater or less, than the outstanding loss at that particular time.

Q. Is there any way your books are kept whereby you can tell for each of the years, 1917, 1918, 1919, 1920 and 1921, just the amount of money which you paid in losses, and is that represented in this first column?

A. That is a part of those figures, yes.

Q. That is a part of the figures?

A. That is a part of our figures—that is applicable to Missouri.

Q. Yes. So you have not filed here yet a statement showing the actual losses which you paid during those five years?

A. Well, those are the actual losses paid in Missouri.

Q. Those are the actual losses paid in Missouri during this five years?

A. Yes.

Q. Well, let's see if they are. In 1917 you paid $15,000. 1917 you carried over unpaid $11,000. Now, where do you show that that $11,000, or whatever sum is represented, was paid in 1918?

A. Well, you can't fix those figures out from there. I would have to—just to follow through there. At the end [fol. 278] of 1916, there were about $3,500 in losses unpaid or outstanding. In 1917 we paid over $15,000. Consequently, the $4,000 outstanding at the end of 1916 were, no doubt, all paid and included in 1917.

Q. Well, do you know that, or why do you say "no doubt"?

A. Well, that assumed these losses are settled shortly after the first of the year. Some of those might have been reported on December 31.

Q. Your losses are not always paid within a year, are they?

A. They are settled sooner than that, as a general rule, unless litigation results.

The Referee:

Q. Mr. Witness, are your paid losses counted as of the time of payment, without regard as to when they may have been incurred—by which I mean to say, have you ever a loss which is incurred in 1917 and it is paid in 1918, that would show up in the paid loss account of 1918?

A. It would; yes, sir.

The Referee: Pardon me, while I am on that subject.

Q. You spoke a moment ago about your paid loss account being affected by the salvage account. How is it affected?

A. If we paid a loss of $500 and took some of the burned material and salvaged it, and received $200, that would reduce the net premium to $300——

Mr. Folonie: Net loss, you mean.

A. Yes.

The Referee: Q. Now, then, is the salvage counted in—is your salvage account in a particular instance commonly, invariably or generally closed up before or when the loss is paid, or may it run over until later?

A. It is usually disposed of shortly after the claim is paid by the company.

[fol. 279] The Referee: Q. Then suppose you have an incurred loss of $500, a paid loss of $500, and thereafter a salvage reclamation of $100. What do you do with that $100?

A. That would be credited up under that same claim number—I get your point there. If the loss was paid before the end of the year and the salvage recovered after the first of the year, that would be reported as a credit to losses the following year when the money was received. It would reduce your loss payments that year.

The Referee: Proceed.

Mr. Barker:

Q. Now, your expenses in Missouri—Plaintiffs' 10—are those direct expenses, or both direct and apportioned—on your printed Exhibit 10?

A. Yes, sir.

Q. What, please?

A. Both.

Q. Both direct and apportioned?

A. Yes, sir.

Q. Now, for instance, in 1920, it cost you 47½ per cent, or $47.50 for each $100 received, to do business in Missouri?

A. Yes, sir.

Q. Now, in 1921, the year following, you did business in Missouri for 35 per cent. Why do they vary 12 per cent in one year?

A. Well, I do not analyze the results, but I would say there was a decrease in premiums.

Q. And a decrease in premiums necessarily decreases expense?

A. It results in greater earned premiums, and necessarily reduces expense; yes.

Q. Necessarily decreases expenses?
A. Yes.

Mr. Folonie: The ratio.
A. The ratio of expense, I mean.

[fol. 280] Q. Yet, if that falls—in 1918, your earned premiums were $35,000; in 1920 only $31,000. Yet, in 1918 with $35,000 premiums, your expenses were 31 per cent; and in 1920, with $31,000 premiums, $4,000 less, your expense is 47 per cent. That won't work.

A. Well, I can't discuss the individual figures unless I analyze them thoroughly, for the reasons there are so many elements in there that will disturb that.

Q. Then you don't mean to say that it necessarily follows that where the business is less in premiums, the expense is less—that don't always follow?

A. It explains in part a fluctuation of the ratio, but it is not a full explanation.

Q. Look at '18 and '20 for me.

Mr. Hogsett: If the amount of premium is less, of course, the expense ratio is increased. You seem to be assuming the witness said it is decreased.

Mr. Barker: I am only taking his statement. I can prove it either way here—take your choice.

The Referee: One suggestion or question there does that vary, or would it not be varied by confusion as to what is used as the basis, whether earned premiums or unearned premiums and written premiums, and that sort of thing? I am a little confused along that line myself, just at this point, and I merely suggest that confusion so that if counsel desires to do so, he may——

Mr. Barker (interrupting): Well, I will ask him.

Mr. Barker:

Q. What do you mean when you have a greater volume [fol. 281] of premiums, do you have a greater or less volume of expense ordinarily?

A. A greater volume of premiums would produce a greater expense ratio—on the earned premium basis.

Q. On the earned premium basis?

A. Yes.

Q. All right, then look here; if that is true, I will call your attention to 1920 and 1921. Now, in '20, you have $31,000 premiums on an earned basis. In '21, you have $37,000—$7,000 more—and in your $31,000 it cost you 47 per cent. On your $37,000, it only cost you 35 per cent.

A. Well, I can't answer that in a total there for the reason that you must go down every expense item step by step to analyze it. I was trying to give you an idea what the general result would be, but after all, you have a statement of facts there, and I can follow right through and prove the correctness of those figures to you.

Q. Well, you follow it through and prove it to me. Taking those two years, 1920 and 1921.

A. The premiums of 1921 were less than they were in 1920, which tends to reduce your earned premiums. You—

Q. You have made a mistake there, haven't you?

A. No.

Q. You say the premiums in 1921 were less than 1920?

A. Permiums received were less; premiums written—which affects your earned premiums adversely.

Q. Where did you get that?

A. Well, according to your statement here. In 1920, you have got admitted net premiums in the State of Missouri $41,000; in 1921, there are only $32,000, a difference of almost 25 per cent; or 20 per cent, rather.

[fol. 282] Q. How does it show on tabulation 10? Just the opposite.

A. — now. But these are premiums written. As reported on page 7 in the annual statement to Missouri.

Q. What is plaintiffs' 10?

A. Plaintiffs' 10 is a summary of the report I compiled here—a summary of the earned premiums from the reports as compiled here.

Q. So that if you figured on the premiums written, necessarily you have a greater fund than on earned premiums?

A. For that particular year; yes.

Q. For any year?

A. No. If the premiums written were greater than the previous year, the earned premiums are reduced. So it should average up, probably.

Q. Well, then, the difference is this: That on your premiums written in 1920, $41,000; premiums earned, in 1920, $31,000. Where did you lose that $10,000?

A. That is the difference in the calculation from the unearned premium of the previous year, and the unearned premium at the end of the current year.

Q. That is the difference between that. Now, how do you get to that difference?

A. Well, to arrive at an earned premium, you begin with the unearned premium at the beginning of the period or year, add to it the writings of that year, and deduct the unearned premium at the end of that year.

Q. Now, then, if we could take them all, premiums received instead of premiums earned, it would be much easier to calculate, wouldn't it?

A. I wouldn't say it would be any easier. It is not the proper way.

[fol. 283] Q. It is not the proper way?

A. No, sir.

Q. But it at least would be more convenient and easier, wouldn't it?

A. No, I wouldn't put it that way.

Q. You wouldn't put it that way?

A. No, sir.

Q. Now, in counting your earned premiums on an ascending scale with an increase of business, for instance, unearned premiums. If you had unearned premiums on the 1st of January, 1917, of $10,000; unearned premiums. Now, on the 1st of January, 1922, you would necessarily have a greater rate of unearned premium—the volume of business being greater—wouldn't you?

A. Yes.

Q. And that is why you figured on the unearned premium instead of on the paid premium?

A. No, I stated before that is not my reason for doing it.

Q. Isn't that the reason known and recognized by fire insurance accountants? Haven't you heard them discuss that reason?

A. Because it produces a greater or lesser figure?

Q. Yes.

A. No.

Q. No, that is not the reason?

A. No, sir.

Mr. Barker: That is all.

Redirect examination by Mr. Hogsett:

Q. Isn't the real reason here because it is the only method of reflecting the actual experience of the company during a given period?

A. Yes, sir.

Q. Do you know any insurance company in the country, from your experience in the business, that figures its profit [fol. 284] or loss on any basis except the earned premium basis?

A. I do not.

Q. Did you ever hear of an insurance company that undertook to figure a profit or loss that did it on the paid or cash basis?

A. No, sir.

Q. Did you ever know of an insurance company that figured its profit or loss on any basis except the incurred loss and incurred expenses?

A. No, sir.

Q. Is that the way you would figure the profit or loss on your business for the manager, if he would come in and ask you what the status of the company was as of a given time—would you figure it on identically this same basis?

A. I would, if I was in possession of all the figures at the time.

Q. Yes. And you are in possession of them all here?

A. Yes.

Q. And the State of Missouri on page 10 of this blank, the annual statement, asks for a statement of the company's underwriting experience on that same basis, namely "Premiums earned, less losses incurred, less expenses incurred?"

A. Yes, sir; same basis.

Q. This is the official form used in all states, is it not, with which you are familiar?

A. Yes, sir.

Q. So that the states themselves, when they want to know the underwriting experience, get it from you on that basis?

A. Yes, sir.

The Referee: Mr. Hendele, is there any more or less general rule of average as to the proportion of unearned premiums which you may count from year to year in the ex-

[fol. 285] perience of the companies, that will probably not be paid or that will be paid? In other words could you say that if there is a given sum remaining in unearned premiums at the end of a year, that a percentage of that will be paid probably, or probably will not be paid, ultimately?

A. Well, that can not be determined.

The Referee:

Q. I know. But is the experience of the companies such as to enable the deduction of a sort of a general rule as to what is likely to happen?

A. Nothing that I know of.

Mr. Folonie: As I understand your question, it relates to how to determine the portion which is earned and unearned?

The Referee: What I had in mind was this: Somewhat analogous to the fashion the life insurance companies have of calculating the expectancy of life. Now, here are certain unearned premiums which go over from year to year, term to term. My question was simply whether or not the experience of the companies showed that in the ordinary run of affairs, a certain percentage of those unearned preminums could, with reasonable certainty, be counted as certain to be collected and a certain percentage not?

Mr. Folonie: I think your question is answered on page 7 of the annual statement. The witness can readily tell you.

A. In calculating your reserve at the end of 1921, for example, you would set aside on the 1-year business, 50 per cent of your premiums; and on the term business, two [fol. 286] years, 25 per cent, for the 1-year business; and 75 per cent on the business that will run for two years; and so on three, four and five years. So that whatever calculation you will make will automatically take care of the business as it is cancelled or matures—expires.

The Referee:

Q. Let me see if I can express my question a little more clearly. At the end of 1921, say, assume that you had outstanding unearned premiums, the money being in your possession, the sum of $100,000. Now those premiums would

accrue from policies having various times yet to run undoubtedly. Would those contracts constitute an asset of any reasonably definitely ascertainable value, based upon the expectancy of a certain percentage of that $100,000 actually earned by the company, taking into consideration the experience of companies in cancellations and that sort of thing? Do you get my meaning, Mr. Hendele?

A. I think the figures as prepared would take care of that.

Mr. Hogsett: If I get the court's question it is this: Is there anything in fire insurance analogous to a table of expectancy in life insurance, by which you can calculate what proportion of the unearned premium will be earned? Isn't that the substance of it?

The Referee: Yes.

The Witness: No.

Mr. Hogsett:

Q. Nothing of that kind known?

A. No.

Q. In other words, that might depend on whether your losses were great or small, or whether or not this man would cancel or that man would cancel and that you have [fol. 287] no definite or even indefinite way of knowing in the future?

A. No.

Q. So that you never can tell, when $100 is paid to you in premiums for a 5-year period, policy, whether or not you are ultimately going to earn all of that or a part of it, and if you earn part of it, whether it is going to be on a pro rata basis or on a short-rate table basis?

A. We have no way of knowing that.

Q. So that when $100 is put into your bank account today in prepayment of a 5-year policy, no man on earth can ever say with certainty that that money will ultimately all be yours?

A. No, sir.

The Referee:

Q. Is there any percentage of calculations year by year? What per cent of policies would be cancelled—I mean, in amount, of course.

A. Well, that will vary. I don't know that I could even state a certain percentage on that, because I think the fluctuation is so large and so different in different companies.

Mr. Hogsett:

Q. And another element that would come in there would be the happening of a loss—a total payment of the face of the policy, that would terminate the policy, of course?

A. Yes.

Q. Even though the term had not yet expired, or had not even anywhere never expired? That's true, isn't it?

A. Yes.

Q. And a partial payment of the face of the policy would reduce the amount of the policy proportionately?

A. Yes, sir.

[fol. 288] Q. Mr. Barker, in his questions, asked you if you knew of any other business like unto the insurance company's business, and compared mercantile concerns in questioning you about the proper basis of figuring profit. The mercantile concern that sells an article and receives money, earns the money immediately, does it not?

A. I think it does.

Q. Yes. That money all belongs to the merchant then and there, does it not?

A. Yes, because they are dealing in tangible property.

Q. Yes. That passes at once, and the money passes at once?

A. Yes.

Q. And the transaction is closed?

A. Yes, sir.

Q. But in a 5-year term policy in which you will receive the premium in 1917, that contract is to run for four years more; does it not?

A. Yes, sir.

Q. And you don't earn—you can't truly call the premiums all yours for any year except 1917, can you, at the close of 1917?

A. No, sir.

Q. You don't earn the second fifth of it, or the third fifth of it, or the fourth fifth of it, or the fifth fifth of the premium until the expiration of the complete 5-year term of the policy?

A. Yes, sir.

Q. And that is why you and all companies in calculating profit or loss do it upon the basis of the proportion of the premium which you have actually earned?

A. Yes, sir, that is it.

Q. Now, with respect to the calculation of the earned premium when you know the amount of your unearned premium at the beginning of the 5-year period, when you [fol. 289] know the amount of your written, or we will say "paid" premium, treat them as equivalent, during the 5-year period, and when you know the amount of your unearned premium at the end of the 5-year period, how do you arrive at the earned premium during the 5-year period?

A. You can take the unearned premium at the beginning of the 5-year period, add to it the business written—the premiums written for each of the five years, and then deduct the unearned premium at the end of the fifth year.

Q. And does that truly give you the amount of your earned premium for the period?

A. Just the same as though you were to calculate it year by year for that term.

Q. And is that the way the State of Missouri asks you to calculate it on page 10 of its underwriting exhibit or annual statement?

A. Just the same.

Q. Now, in arriving at incurred losses, when you know the amount of your paid losses during a 5-year period, and when you know the amount of your outstanding losses at the end—and beginning of the period, how do you arrive at the true amount of your incurred losses for the period?

A. You take your paid losses for each of the five years and deduct from that total the outstanding losses at the beginning of the 5-year period, and add to it the outstanding losses at the end of the 5-year period, which gives the actual unearned losses for the 5-year period.

[fol. 290] Q. And is that the same method the State of Missouri has you adopt in calculating your underwriting experience?

A. Precisely.

The Referee: Now a question: Would the results vary depending upon whether or not the company during that

period was doing an increasing or a decreasing volume of business?

A. In arriving at the earned premium?

The Referee: Yes.

A. Well, on the ascending scale it will affect it, naturally. Or would affect it either way.

Mr. Hogsett:

Q. In other words, when the volume of business is constantly increasing, the basis of figuring profits on the earned premium basis would be more favorable to the company in a calculation of profit or loss, would it not?

A. Yes, sir.

Q. But when business falls off and is on a descending scale, then does it work in precisely the opposite way?

A. Yes, sir.

Q. And is not the calculation on the earned premium basis more favorable to the policy holder or the state?

A. Yes, sir.

Q. So that the matter depends as to whether one method is favorable to one side or the other, upon whether the scale of business is ascending or descending, does it not?

A. Yes, sir.

Q. On the ascending scale of business, you have a larger unearned premium at the end of your period than you would on a descending scale, and that is why it may be more favorable to one side or the other, according to whether [fol. 291] business is ascending or descending in volume; that is true, is it not?

A. Yes, sir.

Q. But regardless of which is the more favorable way, whether to the company or to the state, is it a fact of universal practice that companies figure their profits and losses upon this basis? Is that a universal custom and practice among insurance companies?

A. Yes, sir; it is.

Q. Mr. Barker asked you some questions with respect to some commissions. That is a matter that you have no direct contact with except as the results are reported to you in the accounting department?

A. That is all.

Q. But in the number of states, how many states does your department cover?

A. Twelve.

Q. You are paying no higher commissions in St. Louis than other companies similarly situated? In other words, your rate of commissions does not vary from other companies in similar situations at all?

A. I don't know that it does at all; no.

Q. Now, with respect to this statement commonly known as the underwriting exhibit, concerning which counsel for defendant questioned the previous witness, Mr. Toles—on the back of that you have a statement of expenses that the company furnishes each year, do you not?

A. Yes, sir.

Q. Now, does that statement of expenses as furnished by your company include all the expenses of the company in the State of Missouri, or only the ratable part of expenses applied to the lines specifically called for in this blank on [fol. 292] the first page?

A. It does not cover all the expenses in Missouri. It covers the expenses on the business—on the premiums as reported on the inside of the blank.

Q. Exactly.

A. And then a pro rata part of the general overhead, on the same premium.

Q. And this blank on the first page of it—the face of it, we may say—does not include all lines of insurance, but only certain lines; does it not?

A. The blank was different three different times, I think, in the 5-year period.

Q. You mean that the state did not always ask for the same information?

A. No, sir.

Q. Different from year to year?

A. Different three times in the 5-year period.

Q. On the face of this underwriting experience by classes report is a statement covering interest earned on unearned premiums on Missouri business, and interest earned on capital stock and surplus, pro rated for Missouri. How did you arrive at those figures?

A. I don't make those calculations.

Q. Who does?

A. They are made at the home office of the company.

Q. You have no knowledge then as to how they are calculated?

A. No, I don't believe I have.

Q. All right. Mr. Barker also asked you with regard to the method of pro-rating the apportioned parts of your expense shown on one of the exhibits prepared there. As I got your testimony, you said you took the ratio of premiums for Missouri to premiums for the country, and ap- [fol. 293] plied that ratio to the overhead expenses for the country?

A. That is correct.

Q. And that is the method called for by the State of Missouri on the blank known as the underwriting experience by classes blank?

A. Usually they ask for that same method.

Q. "Total for states——"

A. (Interrupting.) Yes. I was thinking a moment there because the 1922 blank was more precise and showed exactly how it was to be figured; and it was the same method employed there.

Q. You figured your apportionment of Missouri expenses in the same way they asked you to figure it on this blank?

A. Yes, sir.

Q. Do you know of any better way of figuring overhead expenses than by that method?

A. No, I do not.

Q. Now some questions were asked with regard to salvage. You say that salvage is commonly realized on immediately or very soon after the payment of the loss?

A. Yes, sir.

Q. In other words, assume the case of a piano, as suggested by General Barker, if the company pays a total loss on a piano, takes over the piano, it sells it as quick as possible?

A. Yes, sir.

Q. Then the proceeds are credited to the loss account, thereby reducing the amount of your losses?

A. Yes, sir.

Q. Now, with reference to a 5-year period, would the element of salvage cut any material figure in arriving at [fol. 294] the true incurred losses for the period?

A. I don't believe it would.

Q. It would be a negligible amount, wouldn't it?

A. Yes, sir.

Q. Depending upon what salvage there might be realized upon within the last few days or months, we will say, of the 5-year period?

A. Yes, sir.

Q. Which would be a trifle?

A. Yes, sir.

Q. Now, is it true or not that the incurred losses are necessarily larger than the paid losses for a period, or may they be either greater or less?

A. Well, for one period, they might ordinarily be the same over a given period, but the only fluctuation would be caused by losses reported a few days prior to the closing of the books for a given period.

Q. To illustrate that, if, on a 5-year period, you had a great volume of losses reported in the last thirty days or sixty days, we will say——

A. The time for payment under a standard policy?

Q. Yes, sir. If all those losses weren't adjusted in that period, that might make the amount of paid losses less than the amount of incurred losses—or would it be the reverse?

A. It would increase the incurred losses.

Q. Yes, it would increase the incurred losses. But in the long run, that equalizes itself, does it not?

A. Yes; following right along your theory there. If the following period, you had a great amount of incurred losses brought forward, your paid losses would necessarily be more for that period than your incurred losses would be. [fol. 295] Q. So, in the long run, the thing equalizes itself?

A. The thing equalizes itself; yes, sir.

Q. And the fluctuation, if there be any, simply depends upon the losses reported or loss experience during the last thirty or sixty days of the 5-year period?

A. Yes; where a loss has been received and we haven't had time to adjust them and pay them.

Q. Now, His Honor asked a previous witness with respect to the difference between written premiums and paid premiums. Now, by written premiums, you mean the premium expressed on the face of the policy, don't you?

A. Yes, sir.

Q. In other words, each policy says that "This company in consideration of a premium of $100 does hereby insure so and so"?

A. Yes, sir.

Q. That $100 is what you mean by the written premium?

A. Yes, sir.

Q. You charge that on your books to the agent, don't you, at Chicago?

A. Yes, sir.

Q. And the agent gets it or not, as the case may be, from his assured?

A. Yes, sir.

Q. The company never at any time gets the writen premium, does it, because it always pays the commission out of that?

A. No, sir. Our dealings are entirely with the agent; consequently, the amount charged to our agent is the premium less any return premium on cancellations and commissions, and postage allowance, resulting in a certain amount due us.

Q. The amount received by you, then, for a given period, should be the written premium less the commission and [fol. 296] allowance; should it not?

A. Yes, sir.

Q. And in the event an agent fails to pay, you take account of that somewhere in your records, do you? Agents' balances unpaid?

A. Yes, sir.

Q. So you can arrive by calculating your written premium, less commission and postage allowance, and by taking into the calculation amounts charged off on account of agency balances, you can arrive at the amount that you actually receive?

A. That would be rather difficult, because you don't know the exact amount of the commission in that figure. Knowing, of course, that you are interested in dealing with an agent only in the amount that he owes you.

The Referee: But you do ultimately arrive at a point in time when that can be ascertained?

A. Well, not in what you would call a paid or unpaid premium.

The Referee:

Q. Well, when the transaction is closed, then you know how much you realized on that particular transaction, do you not?

A. We know that, but we can't define it as between premiums, return premiums and commissions; that is a laborious task.

Mr. Hogsett:

Q. But your books are kept in such a way that you could arrive at that amount if you had to do it?

A. I think I can say "yes."

Mr. Hogsett: That is all.

The Referee:

Q. Specifically, Mr. Hendele, you could take the account of a given individual who insured with your company for [fol. 297] a period of three years, from 1914 to 1917, and whose account was then closed out, and never since reopened, you can tell, can you or not, exactly from your books what you realized out of that particular transaction?

A. Well, I can say the calculation can be made. It would mean considerable work to delve through the records to produce the figures in just that form.

The Referee. I am not suggesting that you do that. We are desiring to ascertain if the books would reveal that.

A. Yes.

Mr. Hogsett: That is all.

Recross-examination by Mr. Barker:

Q. Now, you stated a moment ago in answer to counsel, that you figured the unearned premiums in this particular rate case on an ascending scale and that it resulted in the benefit in favor of the company; is that right?

A. No.

Q. You didn't tell Mr. Hogsett that?

A. He asked the effect.

Q. Yes.

A. What the effect would be in computing the earned premiums on the ascending scale.

Q. What did you tell him?

A. That it would be in favor of the companies.

Q. And you did compute it that way?

A. When I made the computation, I didn't take into account whether the business was ascending or descending.

Q. Now, tell the court whether it was ascending or descending?

A. I would have to review the figures to see whether they——

[fol.298] Q. (Interrupting.) Well, there they are. Starting with 1917, was it on an ascending or descending scale?

A. Well, I would say it is about an average. In 1917, the admitted net premiums were $33,395; in 1918, they were $31,891; in 1919, $31,098; in 1920, $41,677; and 1921, $34,815. In other words, you leave off at the end of the 5-year period only $1,000 more than you had at the beginning of the period.

Q. Yes, but in 1920, you have $41,000, so that is an ascending scale, isn't it?

A. Well, I guess the average is pretty close to where you start.

Q. Well, let's take it on the earned premium basis. That is what you answered him. Now, on the earned premium basis, calling your attention to Plaintiffs' Exhibit 10, it is substantially an ascending scale, is it not, on the earned premium basis? That is what he asked you.

A. I don't know that it is. In tabulating the premiums written in the 5-year period on the admitted net basis, produces a total of roughly $170,000. The earned premiums for that period are $162,000.

Q. Yes. So, that now on the first year on the net premiums as he asked you here, the earned premiums in Missouri were $26,000—I will not use any other figures.

A. Yes, sir.

Q. In 1918, $35,000; 1919, $31,000; 1920, $31,000; 1921, $37,000. Now tell the court whether that is an ascending or descending scale.

A. I would say it fluctuates, but the average is about the same.

Q. Well, let us figure it then. You start out in 1917 with $26,000 of earned premiums, don't you?

A. Yes, sir.

[fol. 299] Q. Now, do you ever have another year of as small as that, or do they increase?

A. They increase over that year.

Q. All right. Now, the first year, 1917, is $26,000. The last year, 1921, is $37,000, an increase of $11,000, so that is an ascending scale and you so told Mr. Hogsett, didn't you?

A. When you compare the first and last year it is ascending.

Q. Well, take your pencil then and we will figure it. Figure these up and average them, and we will see.

A. All right.

Q. $26,964 in 1917; $35,055 in 1918; $31,991 in 1919; $31,004 in 1920; $37,298 in 1921. Add them for me and give me the average for five years.

(Witness makes calculation.)

A. Average is $32,463 per year.

Q. Now, is that an ascending or descending scale?

A. Well, probably you would call that ascending.

Q. Why you know it is ascending and so told him, didn't you?

A. No, I did not.

Mr. Hogsett: I didn't ask him that question.

Mr. Barker:

Q. Didn't Mr. Hogsett say this to you: In this particular instance now, taking these five years, it is on an ascending scale and, therefore, in our favor, but that was not the reason you figured it." Don't you remember that one?

A. I don't remember that one.

Q. Now, then, if it had not been an ascending scale would you have used this same method?

A. Precisely.

Q. Precisely?

A. Yes.

[fol. 300] Q. Now, then, he also asked you about a mercantile establishment with reference to the comparison of the earnings. Now, if a mercantile establishment, as you know as an accountant, has a capital stock of $100,000 at the

end of the year, how does it figure its profit and loss? On the volume of goods sold, or upon the capital stock?

A. I don't know how they do it, but I got an opinion.

Q. All right. What is your opinion?

A. I would say the would determine the profit on the volume of sales.

Q. You would say they would determine the profit on the volume of sales?

A. Yes.

Q. That is, take the Standard Oil Company as an illustration, or any other company that is incorporated they don't figure their profit and loss on their capital stock at all; in fact, you never heard of that, did you?

A. I wouldn't think they would.

Q. No, sir. So far as your experience as an accountant goes, you never heard of a dividend of 6 or 7 or 8 or 10 per cent on capital stock? You never heard of that in your life, did you?

A. Never heard—I have heard the expression.

Q. But it is an improper expression, isn't it?

A. I never gave it much thought.

Q. Now, tell the court that you don't know that all business and manufacturing companies declare a dividend on what—the capital stock or amount of business done?

[fol. 301] Mr. Hogsett: We object to that as immaterial.

Mr. Barker: It is very material because this witness is an expert accountant.

The Referee: Overruled. Answer the question.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Barker:

Q. What do they declare a dividend on, sir?

A. You must not lose account of the fact that I am an accountant in a departmental office, and I have no access to the books and don't know how dividends are declared.

Q. Did you go through a school of accountancy?

A. Yes, sir.

Q. And didn't they tell you to figure the payment of a dividend on the capital stock—sometimes, surplus?

A. No sir.

Q. You never heard of that before?

A. I have heard of it.

Q. Is it your theory that the business and manufacturing corporations of this country, when they declare a dividend, if they do declare one at the end of the year, declare it not on the capital but on the business done?

A. I haven't heard that expression, no.

Q. You know that is not true? It is always on the capital, isn't it?

A. That is what I have heard.

Q. Why, certainly. Now, then, if your company had a capital of $300,000, as an accountant, tell me how much of that capital was devoted to Missouri, considering the vol- [fol. 302] ume of business as you told Mr. Hogsett you did on expenses done in Missouri as compared to the volume done throughout the United States.

A. Well, I don't know.

Q. Well, you figured it for him for expenses; can't you figure it for me on capital in the same way?

(No answer.)

Q. In other words, maybe, I will make myself a little clearer. You told him that on expenses which you apportioned to Missouri, you figured the expenses of the entire United States, then you figured the volume of business in Missouri, as it bore to the United States, and you apportioned your expenses that way? That's right, isn't it?

A. Yes.

Q. Now, you can apportion the capital the same way, can't you?

A. I don't know that I can.

Q. $300,000——

Mr. Hogsett (interrupting): I would like to make an objection. If the court please, he is interrogating this witness in regard to questions of law. In the last analysis that is what it results in: Whether or not a profit or loss of an insurance company in the State of Missouri is to be calculated upon capital stock or upon premiums, is a question of law—purely.

Mr. Barker: Then I will suggest that if they be allowed to show their theory, of course, if we are denied the right of showing our theory, there would not be anything for the court to pass on.

Mr. Hogsett: We haven't showed anything but the facts. [fol. 303] Mr. Barker: They have shown their theory of figuring profits or losses on their theory of the income. Now, we claim that is an improper theory and wish to submit our theory, so the court will have both theories before him, and then it will become a legal question.

The Referee: Overruled.

(To which action and ruling of the referee the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Now, then, you have figured for Mr. Hogsett in the tables which you have submitted, your profit and loss on your income from Missouri. Now, will you apportion of your $300,000 that portion to Missouri in accordance with the volume of business done in Missouri by your company? Will you do that for me?

A. Would I do that?

Q. No; will you do that for me now? Amounts to about 3 per cent, won't it? Or figure it.

Mr. Hogsett: Which year are you taking?

Mr. Barker: Five years; covering the 5-year period.

Mr. Barker:

Q. Will it not amount to about 3 per cent, covering the 5-year period?

A. What basis are you using?

Q. Basis you used in computing expenses. That is, take the volume of business done throughout the United States on your capital of $300,000, the volume of business done in Missouri, and apportion it.

A. On the basis you have asked that, it is on the ratio of 2.1 per cent.

[fol. 304] Q. That is, you apportion to Missouri, then 2.1 per cent of your capital?

A. I wouldn't, but for the purpose of answering your question that is the calculation.

Q. You apportion to Missouri on your calculation 2 and what?

A. 21 per cent.

Q. And how much of that is $300,000, your capital?

A. $6,320.

Q. So that covering this period——

Mr. Hogsett: Isn't it only $630?

Mr. Barker: No, that is right.

Q. So that, Mr. Accountant, if you apportion that part of your $300,000 capital to the State of Missouri in proportion to the volume of business done in the State of Missouri as compared to the United States, you have employed in your Missouri business $6,320 during that 5-year period?

A. Following your theory; yes.

Q. Now, then if you have apportioned and have employed in Missouri $6,320 covering a 5-year period, taking this statement of your losses and profits in Missouri, figure out to me how much of a profit your company made on the amount of capital which it had invested during those five years.

A. I don't know whether the company made any money.

Q. Well, you have got your totals; you made them here. In Missouri. I am talking about your Missouri business. Take Exhibit 10 which shows your profit and losses in Missouri during these same five years?

A. Yes.

[fol. 305] Q. And figure out your total profit or your total loss during those five years. You have it tabulated. What is your total profit in Missouri during those five years?

A. $6,782.

Q. Then upon capital apportioned to Missouri of $6,320, you earned on your Missouri business during that year more than 100 per cent of the amount——

A. No, you have got that wrong.

Q. No, let's get it right. You devoted to Missouri $6,320 of your capital?

A. Yes.

Q. Now, you earned in Missouri during that five years $6,000—where is that earning $6,782?

A. Yes.

Q. Then, on capital devoted to Missouri of $6,320, you earned $6,782?

The Referee: In the 5-year period?

A. No.

Q. Well, take your time and tell me why not.

A. It didn't take that capital to make $6,782 in Missouri.

Q. Let me ask you the question and see if we can't understand it. If you apportioned $6,320 of your capital to Missouri in accordance with the business produced by Missouri, and if you earned during those five years $6,782 in Missouri, then you earned more than the capital which you devoted to Missouri; did you not?

A. I don't get your question.

Mr. Barker: That is all right. That is all.

Redirect examination by Mr. Hogsett:

Q. If your company—assuming Mr. Barker's method of allocating capital, paid a profit of say, 3 per cent on its [fol. 306] capital, it would make $180, wouldn't it—in Missouri, under his system?

A. Yes, sir.

Q. $180?

A. Yes.

Q. The profit of 6 per cent on his system of allocating capital, would reveal a profit for the five years of $320. Did you ever hear of an insurance company figuring profit or loss with respect to its capital allocated to a state? Did you ever hear that before counsel began to interrogate you?

Mr. Barker: We object to what this witness may or may not have heard. It is so well settled that you can only charge to——

Mr. Hogsett (interrupting):

Q. General Barker asked you if you had read anything in a newspaper on a certain point—did you ever read anything either from a newspaper or magazine or publication on the subject and method of calculation of profit with respect to capital allocated to a state?

A. Never saw a thing on it.

Q. Never heard of that before today?
A. No, sir.

Mr. Hogsett: That is all.

Recross-examination by Mr. Barker:

Q. Then if you are figuring the profits in that state and allocating the expenses to that state you can't do it any other way except on the capital devoted to that state, can you?

A. I don't see that you would in figuring an underwriting profit.

Q. I am not asking you about an underwriting profit, my friend.

A. You might in figuring a corporate profit. That is a different proposition entirely.

[fol. 307] Q. Then your corporate profit in Missouri on your capital investment in Missouri during the five years was more than 100 per cent?

A. No, I don't see where you get that. I don't see that.

Q. Well, you call it a corporate profit. Now, let's assume that a foreign corporation—because you are an accountant and use to figuring these things, and I am not, and don't know much about them, but trying to get your idea of it—a foreign corporation comes into Missouri and it applies for admission to the state, and it recites that it intends to devote $200,000 to the business which it wishes to engage in in Missouri. Now, then, if at the end of the year it earned $12,000 on the Missouri business, that would have been a profit on the money devoted to the Missouri business of 6 per cent a year, wouldn't it?

A. Yes.

Q. Why certainly.

Mr. Barker: That is all.

Redirect examination by Mr. Hogsett:

Q. As a matter of fact, the entire capital of your company is subject to obligations incurred in the State of Missouri, is it not?

Mr. Barker: We object to that. That is purely a legal matter. This gentleman is not a lawyer.

Q. The combined assets of your company, including its capital and surplus, is available to meet Missouri obligations?

A. Yes.

Mr. Barker: Object to that and ask that it be stricken out; purely a question of law.

[fol. 308] The Referee: Objection sustained. Question of law.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still excepts.)

Mr. Hogsett: That is all.

Recross-examination by Mr. Barker:

Q. Now, then, Mr. Witness, if I had a manufacturing company here in Chicago, in which I was manufacturing automobiles with a capital stock of $100,000, if at the end of the year I came to you to figure as to the amount of money which I had made, and you figured that after all expenses and everything was taken care of that I had a net balance of $6,000, how much figuring—how much profit would you figure that I had made on that corporation?

A. You would first have to tell me the volume of sales before I could answer the question.

Q. All right. $100,000 capital; $100,000 sales. On the $100,000 sales, after all expenses and all depreciation left of $6,000. How much would you advise me, as an accountant, that I had earned for that corporation?

A. Well, that figures $600?

Q. What—$6,000?

A. The capital would not enter into the calculation.

Q. Well, then, just tell me what I would earn. I had $100,000 captial, and I did $100,000 worth of business, and I paid all expenses of all kinds, allowing for depreciation and everything else. At the end of the year, I had $6,000 [fol. 309] in cash which belonged to the corporation. How much had the corporation made?

The Referee: What per cent?

Mr. Barker: Yes, what per cent had the corporation made?

A. 6 per cent.

Q. On what?

A. On your sales.

Q. On your sales?

A. Surely.

Q. All right. Then, suppose I came to you the next year with the same $100,000 capital, corporation, and no surplus, and I told you that we did $50,000 worth of business that year. After all expenses were paid, depreciation of every kind and everything, there was left a net balance of $6,000. How must would you advise me to report to the directors that the corporation had made that year?

A. Well, you would figure your percentage on sales.

Q. Well, how much would it be?

A. What were your sales?

Q. Sales would be $50,000; $100,000 capital. Net would be $6,000 that you had. How much would you make—the corporation?

A. Well, if you carried over $6,000 the previous year, you didn't make any that year.

Q. No, that has been distributed to the stockholders. How much did the corporation make the second year?

A. 12 per cent, on that volume of sales.

Q. Would you return 12 per cent to your stockholders?

A. That is a different matter. You figure your profit on your volume of sales. You are trying to get two questions in there in one answer.

[fol. 310] Mr. Barker: Well, I believe that is all.

Mr. Hogsett: That is all.

The Referee: Anything further with this gentleman, Mr. Hogsett?

Mr. Hogsett: No, sir.

(Witness Hendele excused.)

The Referee: Shall we take a recess?

Mr. Hogsett: I assume it is so late we probably better adjourn now.

The Referee: All right. We will adjourn then, gentlemen, until 10 o'clock on Monday morning, June 18, 1923, and at this place.

(Whereupon, an adjournment was taken until Monday morning, June 18, 1923, at 10 o'clock.)

Pursuant to adjournment heretofore noted, parties reconvened at the same place, Auditorium Room, Insurance Exchange Building, Chicago, Illinois, on Monday, the 18th day of June, 1923, and the following proceedings were had:

Appearances the same as before except Mr. John S. Leahy appearing among counsel for plaintiffs instead of Mr. Sanders as heretofore.

F. G. Bush, having been called as a witness on behalf of the plaintiffs, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name, please?

A. F. G. Bush.

Q. And by whom are you employed, Mr. Bush?

A. The Aetna Insurance Company.

[fol. 311] Q. In what capacity?

A. Head bookkeeper, accountant.

Q. Where is the head office of the Aetna Insurance Company?

A. Hartford, Connecticut.

Q. The Aetna Insurance Company is engaged, in general, in the business of insurance, fire and marine insurance and allied lines, is it?

A. It is.

Q. There is also a company bearing the name Aetna engaged in life insurance business, is there not?

A. I believe so.

Q. That is not your company, however?

A. No connection.

Q. I call your attention to that at this time, of course, because their head office happens also to be in Hartford, and their name is somewhat similar—simply to clarify that point.

The Referee: What is the exact name of this company?

A. Aetna Insurance Company.

The Referee:

Q. The name of the other company?

A. Aetna Life Insurance Company.

Mr. Folonie:

Q. How long have you been connected with the Aetna Insurance Company?

A. Since 1911.

Q. And all the time in the same department of your company?

A. Yes, sir.

Q. Your services are confined to the business of the company at its western department, are they not?

A. Exclusively.

Q. The western department of your company is located where?

A. Chicago, Illinois.

[fol. 312] Q. In what building?

A. Insurance Exchange, eighteenth floor of the Insurance Exchange Building.

Q. Did you during the years 1917 to 1921, inclusive, have charge of the books and records of the western department of your company relating to the business of that department, inclusive of the State of Missouri?

A. I did.

Q. In what states did your company engage in business during the period in question?

A. When you ask that question "company," I presume you mean general company, exclusive of the western branch?

Q. No. In what states did your western branch do business?

A. Seventeen of the middle western states, including Missouri.

Q. And your company did business in the United States in general, did it?

A. Yes, sir.

Q. Now, in the regular course of the business of your company as conducted at this western department during the five years mentioned, what was the method of receiving information in your office as to contracts or polices undertaken by your company in the State of Missouri?

A. Well, the usual agency method of agent making up at the time he issued a policy, a duplicate of the policy in the form of a daily report and sending in that daily report to the company as the evidence of the insurance contract.

Q. And that daily report, did it contain a statement of the amount of insurance written on a particular risk?

A. It did.

[fol. 313] Q. The amount of premiums thereon?

A. Yes, sir.

Q. The name of the agent who had undertaken the business for you?

A. Yes, sir.

Q. And the terms or special conditions which might be attached to the particular policy?

A. Yes, sir.

Q. Did the daily report also contain information as to the term or time which a contract would run?

A. Yes, sir.

Q. In general, what are the terms or times which your contracts—over what period or periods?

A. Usually one to five years; one, three and five years, as a general rule.

Q. And is that, in general, true of fire insurers, that their contracts run for one, three and five years?

A. That is, to the best of my understanding; yes.

Q. Now, in recording the information contained in these daily reports of agents, how was record made in your office of these daily reports other than the filing of the reports themselves?

A. Do you refer to the method we have of putting the items on our books, so to speak?

Q. Well, I was directing your attention particularly to your system of using cards, if you do.

A. Well, the daily report is first entered in what is called a register, that is, after mapping—so-called mapping. The underwriting department receives a daily report in our office and examines it, and does such other necessary details as are connected with it, entering it on a map, and passing it on to the accountant's department where it is registered in the agency register, giving almost a complete history of that which is described in the daily report.

[fol. 314] Q. Now, do you have also agency balance books or accounts?

A. Yes, sir.

Q. And what function do they serve, or what information do they contain?

A. They contain all the information that is reported by

an agent in his account with reference to amounts and premiums, and the amount which the agent still owes the company by reason of the business written into the account.

Q. When a policy is written in the ordinary course of events, does the money accompany the daily report or does it come at a later time?

A. The usual average, I should say, would be that the remittances follow. Usually, a daily report is issued—well, sometimes many of them written by an agent in one month and embodied in that month's account, and that then comes a report showing a summarizing of the business of that month. Remittances usually follow at some later date, although there are times when an agent will remit specifically for a specific item.

Q. Now, besides the agency balance books of account and the policy registers, what other books of account do you keep, or did you keep during the period in question, which would disclose the premiums and the classifications into which they were divided with respect to the different hazards undertaken?

A. Well, aside from those we have mentioned, the only ones, I believe, would be the card record; that is, the tabulating card record.

Q. And what are those and how they are made?

A. That is a card that is made to conform by numbers [fol. 315] with the information contained on the daily report, with the possible exception of the name of the assured. It has the state number, agency number, and the term, and the expiration, and amount, and premium and classification of the premium. Those are very small cards and they are used—the information is recorded upon them by a key punch machine, a sort of a punching device; that is, the girl will punch out certain figures to correspond to the information on the daily report.

Q. How do you classify your insurance by means of these cards, and into what classes do you divide them in the regular course of your keeping of records?

A. Well, the onset, the examiner, that is, the original examining party, attaches the classification to the daily report itself, and classifies it according to the risk that is insured, by numbers or certain prefix and designation. That is then transcribed by the key punch machine onto the

cards, and if it has more than one class in the daily report, there are two cards punched.

Q. What do you mean by classes?

A. That is the class of risk insured—a certain number given to, for instance, a dwelling house, a certain manufacturing risk, and so forth and so on.

Q. Do those cards also have information with respect to whether it is a risk of fire or whether it is a risk of hail and tornado, and so forth, and are those divisions kept by means of those cards?

A. There is a division of those classes made sometimes on the one card, and sometimes we have a division or two of different colored cards for different classes of business, [fol. 316] but in substance, I could answer your question "yes."

Q. Now, these punches that you mentioned, will you state briefly how, by means of punching a hole in a card, you can determine the classification?

A. Well, assume that the particular risk had a number 12. That would be two columns under the classification column on the card, and the girl would punch out number 12, which would indicate that risk were class No. 12—belonged in that.

The Referee:

Q. That number, then, indicates the class to which that particular policy belongs?

A. Yes, sir.

Mr. Folonie:

Q. And you have, then, columns where these different numbers appear, and you punch a hole in the appropriate column to indicate that class?

A. Well, in substance. It is really one column, but in that column there are three digits; that is, 999, for instance; so you could punch Nos. 1 or 12 or 912, or any particular number that you might wish.

Q. Now, how many cards, in a rough way, would you accumulate to show classifications of your business in the course of a year—in one year?

A. Well, I should say about 1½ million cards. That is an approximation, of course. I understand that is what you asked?

Q. Yes. And with respect to losses and expenses, do you have to keep records respecting those items?

A. Yes, sir.

Q. And how do the expenses come to you—from what department or branch of your business?

[fol. 317] A. Well, they of course, come from several sources, but accumulate in our department in one of several books; the general office expenses of the company relating to the western branch appear—in the original entry, would be in the general cash book. The items of expense relating to agencies would appear in the agency journals for the particular state in question.

Q. Well, if you had an item of adjustment expense, where would that come from to you?

A. Well, usually in any adjustment expense that is paid by separate voucher—I say "usually," and that would appear as a separate item of entry in the cash book standing alone by itself.

Q. Who issues the vouchers in the payment of adjustment expenses and loss items?

A. Usually those are issued through our loss department, although I believe there are times when loss adjustment expenses are issued by possibly an outside traveling or field man.

Q. In the ordinary course, are they by way of draft or check?

A. Usually draft.

Q. And those drafts, do they come to your department for the purpose of payment?

A. Not perhaps—no, I would say "no." They come to the cashier who approves them, and issues a check in payment of them, and that entry of that check comes to our department.

Q. And that check is a check drawn on the bank where you keep your bank balance, and is for payment of the drafts drawn by the loss department, for example?

A. Correct.

[fol. 318] Q. And is that cashier under your jurisdiction, or in your department?

A. I have no jurisdiction over him, although I have jurisdiction over the books themselves. That is to say, I have the controlling—keep them in balance—see that he is in

balance always with my books. They fit right into my department books.

Q. So that as far as the exercise of discretion in issuing a check is concerned, that is a matter—or draft, or approving it, or determining to issue it, that is a matter within his discretion or judgment; but the propriety of the book entries is a matter under your jurisdiction, isn't that correct?

A. Yes, sir.

Q. Now, about how many books—and I am not speaking of the cards, or the daily reports now, but the books in which the information from those sources is summarized, with respect to the premiums as distinguished from the losses and expenses—about how many books are your records relating to premiums for the years 1917 to 1921, inclusive?

A. Well, there would be a good many. Roughly speaking, I should say there was, oh, possibly forty to fifty a year.

Q. And those books would be how large? Give us some notion of the size of the books. Are they little pocket memorandum books, or some other?

A. There are quite a number, I should say possibly, oh, 50 per cent of those are so-called letterhead size, very thick. The bulk—the balance of them would be in larger books, some as large, I believe, as 24, 34, something about that size; and some of them a little smaller than that. I wouldn't say just how much, at a rough guess. Some are 2 or 3 [fol. 319] inches thick, and a few, I believe, we have that are about an inch and a half or two inches thick.

Q. Now, with respect to your payments respecting losses and expenses, about how many books are involved in respect to those items for the period of years—the five years in question?

A. Well, I should say there would be probably between thirty and forty of those; I would roughly calculate.

Q. How do they compare in size with the books you described relating to premiums?

A. Some of those are letterhead size, but the majority of the loss records are rather voluminous. They are 20 x 30 inches, and 3 or 4 inches thick.

Q. Were these books you kept during the 5-year period in question, kept in the regular course of business of your company as it was conducted, or were they made in anticipation of some lawsuit or litigation?

A. Regular course of business they were kept.

Q. And were they excluding any errors which might reasonably arise through mistake, were they in general correct and true and designed so to be?

A. They were designed to be kept as accurately as it is possible for us to keep them.

Q. I suppose you recognize a possibility of slight errors in books so voluminous and over so long a period of time?

A. Yes, we never have been able to eliminate those.

Q. Now, with respect to the conduct of the business during the five years in question, were those records respecting premiums, insurance written, losses and expenses, kept [fol. 320] separately respecting the State of Missouri, or were those kept in general together with the similar records of various other states in your department?

A. Well, there is a very strict division made of premiums and expenses relating to agency accounts with reference to each state and each agency.

Q. Are those separate accounts kept in separate books or are they in the same books with those of other states?

A. Yes, sir. They are kept originally in separate books, but subsequently bound at the end of a 3-months' period or so, so various states would be bound together.

Q. Now, I suppose that in the business there is some part of the business such as the expense of your Chicago office, which would be kept as a department expense and not kept separately state by state?

A. Yes, sir.

Q. And respecting such expense and the expense of your home office, have you in preparing the figures you were asked to prepare for the purpose of this case, have you undertaken to pro-rate such overhead expenses so as to assign to Missouri its ratable part thereof?

A. Yes, sir.

Q. Then, if I understand you, you have a record which shows the premiums of Missouri and the business written in Missouri for the 5-year period, as a separable matter? You have the direct expenses and the losses in Missouri as separable items, and then you have an overhead item relating particularly to expenses which you have been compelled to apportion in order to find the portion relating to Missouri?

A. Yes, sir.

[fol. 321] Q. Now, directing your attention to the matter of premiums, have you made a calculation respecting the premiums upon Missouri for the year 1917?

A. Yes, sir.

Q. You may refer to your memorandum or tabulation on that. Now, directing your attention to the matter of premiums of your company for the year 1917 in business, have you prepared a tabulation which you now hold in your hand showing the premiums relating both to direct business and to re-insurance, and the return premiums on both, divided so far as possible into the different classes or kinds of hazards undertaken in those various policies so tabulated?

A. Yes, sir.

Q. Upon the direct gross premiums of your company, how have you them divided respecting the classes of business upon which they arose—I mean, respecting particularly the hazards to which they relate?

A. On this blank they are divided "fire and lightning," "hail," "tornado, windstorm and cyclone," and "all other classes," and an aggregate total of all.

[fol. 322] Q. How did you get at the amount of your unpaid losses?

A. Do you mean——

Q. (Interrupting.) I mean, where did you get your figures on your books showing the unpaid losses?

A. Well, they are taken from the loss register; that is to say, a loss register is made of the losses as they are reported to the company; the estimated amount of the losses. That is entered into a register.

Q. Now, who makes that estimate originally, as a rule?

A. Well, I would say offhand that they are made possibly sometimes by the agent, sometimes by the assured, and sometimes by possibly the special agent or whoever—or, I should say, usually by the agent. That would be my conjecture; getting the idea from the assured. Probably calls him up, or writes him, and says, "I have suffered a loss of $100 or $500 or something." I imagine that is about the way it goes.

The Referee:

Q. The Agent who wrote the policy?

A. Yes.

Mr. Jacobs: Do I understand the witness is testifying from his own knowledge about the assured giving an estimated loss, or is he giving merely a conjecture? If that is the testimony, of course, the defendant objects to the testimony, based on the conjecture of the witness.

Mr. Folonie:

Q. Do you know, Mr. Bush, where the agent gets his estimate? Whether it is his own estimate or whether he gets it from somebody else? Do you know that as a fact?

A. No, sir.

[fol. 323] Q. How long do you say this estimated figure on your books?

A. Until such time as it has been adjusted, or the known amount, if it is paid or is to be paid, is ascertained.

Q. In other words, it is carried as an estimated amount on your account until the amount has been rendered certain, or by adjustment or a payment, and then the figure is corrected on your books to that ascertained amount?

A. Yes, sir.

Q. About how long, as a rule, is it that you carry the estimated figure before you get to an adjustment or a payment—in other words, how much of the period of the year would be in this estimated or unpaid amount—what part of your year is in the unpaid amount as of December 31, as a rule?

A. Well, usually just those last losses that are reported in just the last few days, although sometimes they do run over that. It is changed or corrected as rapidly as possible, because we try to get down to the actual figure as rapidly as possible.

Q. Well, December 31, 1917, you would have unpaid losses aside from those which were in course of litigation covering the matter of how long, about? Days, weeks, months or what?

A. Well, I should say not possibly to exceed the last month.

Q. And in those unpaid losses, would there be any part of them which might be resisted or in course of litigation?

A. Yes, sir.

Q. Those might go over a long period of time?

A. Yes, sir.

[fol. 324] Mr. Folonie:

Q. Have you made a calculation from your books and records of the expenses of your company for the State of Missouri for the various years in question?

A. Yes, sir,

Q. Now, respecting thoes expenses which you have said that actual records were kept in your office of the amount in fact expended in Missouri, have you that as an actual calculation from your books and records?

A. Yes, sir.

Q. There is a certain portion of it that you have stated was in the nature of an overhead, and have you arrived at the portion or part which should be assigned or allocated to the State of Missouri?

A. Yes, sir.

Q. How have you calculated that apportionment or allocation?

A. Well, I have used the company's figures and apportioned on a prorata basis to the states the proportion of the expenses as shown in the annual statement, that the Missouri premiums bear to the company premiums.

Q. In taking the home office figures, for example, you took that proportion of the Missouri premiums as they bore to the premiums of your company for the United States? And took that percentage or proportion of the overhead expenses of your company in general, and assigned it to Missouri, did you?

A. Yes, sir.

[fol. 325] The Referee:

Q. Let me see now. As the total premiums in Missouri are to the total premiums in the United States, so are the overhead expenses in Missouri to the total overhead of the United States?

A. Yes, sir.

Mr. Jacobs: Now, may I ask him, if you are going to testify with reference to allocating the expenses, a question or two?

Mr. Folonie: No objections.

Mr. Jacobs: Q. Do you, of your own knowledge, know what the expenses are from the home office which you use in your allocation of expenses to the State of Missouri?

A. No, sir.

Mr. Jacobs: Q. You haven't any personal knowledge upon that matter?

A. No, sir.

Mr. Jacobs: Q. And are merely testifying from the figures supplied to you from some other source?

A. Those figures that are taken from the annual statement of the company.

Mr. Jacobs Q: And you have nothing to do with the keeping of those figures, or the keeping of the books from which those figures were obtained?

A. No, sir.

Mr. Felonie: We make the same statement here as we did to a previous witness, that we expect, of course, to supplement this witness's testimony by the home office figures at a later date.

[fol. 326] Q. Have you from your books and records made a calculation of the Federal taxes of your company year by year, 1917 to 1921?

A. Yes, sir.

Q. What was the amounts, year by year?

A. 1917, $575.66; 1918, $5,183.20.

Q. Now, right there—before you proceed further, can you readily state why the Federal taxes jumped from $575 in 1917 to $5,000 in 1918?

A. Yes, the 1 per cent premium tax.

Mr. Jacobs: One minute. The defendant objects to this testimony, the question just asked, because it relates to the matter of Federal taxes paid by the Aetna Company, and the objection is made because that is not a proper inquiry as relating to expenses chargeable in fixing a rate, [fol. 327] but that it is a purely corporate expense and has no place in an inquiry touching upon the question of rates for fire insurance; and on that account, it is incompetent, irrelevant and immaterial.

Mr. Hogsett: Is it your contention that it is not an expense?

Mr. Jacobs: It is not an expense that can be considered in fixing a rate, but is purely a corporate expense and has no place in an inquiry touching on the fixing of a rate.

Mr. Hogsett: We submit to the referee the tax indirectly

grows out of the profit or loss of operations of the company.

Mr. Barker: We understand the Supreme Court of the United States has held that it is not chargeable at all.

Mr. Hogsett: Now, it would be interesting to see that opinion. They have not so decided.

Mr. Barker: All right. City of Galveston v. Water Company, in the last Supreme Court Reporter, decided about two months ago, opinion by Justice Brandeis.

Mr. Hogsett: In what kind of a case, and what did they hold?

Mr. Barker: We say it was held that a rate-making body should not consider the payment of Federal taxes in arriving at a rate, but that it was a purely corporate expense and should not be included, and was excluded in that case.

Mr. Folonie: Well, this is primarily a premium tax; upon the premiums in Missouri.

[fol. 328] Mr. Barker: We want to protect our record as showing that we are objecting to any Federal taxes.

Mr. Jacobs: You don't contend there is any such premium tax now?

Mr. Folonie: Well, there was during this period when we are inquiring about.

The Referee: This objection grows out of the fundamental difference—one of the fundamental differences between the parties, or taken by the parties to this cause. The objection will be overruled, and the referee will make such further ruling about it when he comes to make his report as the law and the facts may seem to justify.

Mr. Jacobs: Let our objection contain further the statement that the matter inquired into does not entirely cover a premium tax, but relates to other Federal taxes, and our objection is made to that as on the same ground as heretofore assigned.

The Referee: Same ruling.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Folonie:

Q. Now, you may answer: What is the reason for the tax being only $500 in 1917 and $5,000 in 1918?

A. The 1 per cent tax on premiums, and it went into force with the November, 1917, business. Our payments would then start in December; started December 15, if I recall, 1917, for the November business; and that would be the only payment in 1917 of that 1 per cent tax.

[fol. 329] Q. Whereas in 1917, it ran throughout the year?

A. For each month; yes, sir.

Q. What was the amount of such Federal premium tax in 1919?

A. $5,513.22.

Q. And during 1920?

A. $6,927.92.

Q. And in 1921?

A. $6,085.24.

Q. What was the amount of the Missouri taxes, including the state, county and municipal, insurance department, fire department, fire patrol and salvage corps, all other taxes, licenses and fees for the State of Missouri for the year 1917?

Mr. Barker: Same objection as to all taxes—that it is not an operating expense but a corporate expense. And while we are on that, I now furnish these gentlemen with my authority for that, and I understood Mr. Hogsett to say that he had an authority to the opposite. Will you give us your authority, Mr. Hogsett?

Mr. Leahy: It don't say what you say it does.

Mr. Barker: I am saying what we think it says. Now, will you give us yours?

Mr. Hogsett: I didn't make the statement I had any authority directly involving this point.

Mr. Barker: Then I assume you have not.

Mr. Folonie: My associate, Mr. Cockrill, says he relies on the same authority. And I am conducting this on the facts, and I know nothing about the law at all——

Mr. Barker (interrupting): I gave you ours for what it is worth.

The Referee: The referee will adhere to the ruling heretofore announced.

[fol. 330] Q. Have you made a calculation of earned premiums of your company for the respective years 1917 to 1921?

A. Yes, sir.

Q. What is your method of calculation of earned premiums?

A. I take the earned premiums at the commencement of my period, the year 1917, and I add to that the premiums that were written during 1917, and subtract from the sum total of those two the unearned premium at the close of 1917.

Q. And have you made a computation of incurred losses and incurred expenses for the respective years?

A. Yes, sir.

Q. And how have you made a computation of incurred losses and expenses?

A. I take—for the incurred losses, I take the paid losses for the year 1917, add to that the losses that are outstanding at the end of 1917, and subtract from that the unpaid losses at the commencement of 1917.

Q. And that is the loss?

A. Yes.

Q. Now, what are the expenses?

A. I perhaps incorrectly answered your question when I said "incurred expenses." I have not attempted to figure an incurred expense. I have attempted to show the paid expense, because in my calculations here, there is no reserve that I know of set up in the books of the company for incurred expenses in Missouri.

[fol. 331] Q. So the outstanding expense at the beginning and end of the year—you don't have those figures?

A. No, sir. So far as I know, no reserve is set up for any such items that might have accrued in any one year in Missouri.

Q. So far as your books disclose, the incurred expense and paid expense are an identical amount?

A. Yes, sir.

[fol. 332] Cross-examination by Mr. Jacobs:

Q. Mr. Bush, you testified, I believe, in the beginning of [fol. 333] your direct examination, that you were an accountant and a bookkeeper of this particular company?

A. In substance; yes, sir.

Q. And you are in charge of the department?

A. Yes, sir.

Q. What department?

A. The accounting department.

Q. Here in the city of Chicago?

A. Yes, sir.

Q. And there passes through your hands all the bookkeeping of the company in Chicago?

A. Yes, sir.

Q. As well as the matter which is sent from the home office to this city?

A. Yes, sir; that is, relating to the accounts, yes.

Q. Well I mean with reference to the bookkeeping accounts of this company?

A. Yes, sir.

Q. And do those include the accounts of premiums, losses and expenses?

A. Yes, sir.

Q. As relating to the seventeen states in your department?

A. Yes, sir.

Q. How long have you been with the Aetna Company?

A. Since 1911.

Q. You testified—that is something like twelve years?

A. About that.

Q. And you testified this morning that there are two companies: One the Aetna Life Insurance Company, and one the Aetna Insurance Company?

A. Yes.

Q. And that they are both located at the same place, in Hartford. I believe you said?

A. Yes.

Q. Have you ever been connected with the home office in Hartford of this company?

A. Of the Aetna Insurance Company; no, sir.

[fol. 334] Q. Have you ever held an executive position with the Aetna Insurance Company?

A. None other than I have at the present time; no, sir.

Q. Where did you get your information that there was no relationship between these two companies?

A. Just as a matter of common knowledge. That is the basis on which I answered my question.

Q. You mean by that, that you have merely heard that to be a fact?

A. Matter of common knowledge to me, that there is no connection.

Q. What do you mean by "common knowledge"?

A. Such knowledge as we have gained by most any source; for instance, I have no calculations that have ever passed through my hands relating to the Aetna Life Insurance Company.

Q. None whatever?

A. No.

Q. No calculations?

A. No, sir.

Q. Haven't these calculations upon which you have based your testimony passed through your hands?

A. Yes, sir.

Q. Well, what did you mean by the statement that no calculations of this company have passed through your hands?

A. I said that no calculations from the Aetna Life Insurance Company have passed through my hands.

Q. Oh, well, you are not supposed to be handling the life insurance company business in the western office of the Aetna Insurance Company, are you?

A. No, sir.

[fol. 335] Q. And, naturally, no life insurance company business would pass through your hands under those circumstances?

A. No, sir.

Q. You are not really possessed of any personal, definite information concerning either a connection or absence of connection between those companies, are you?

A. Beyond that; no, sir.

Q. Beyond that, no. Now, you say you have been with the company about thirteen years?

A. Yes.

Q. How long if you know, has the Aetna Life Insurance Company been doing business in the State of Missouri? I mean, the Aetna Insurance Company, the company with which you are associated.

A. Well, it has been doing business there since I have been with the company, but how long previous to that time, I am not prepared to state.

Q. Has it ever become a matter of common knowledge

with you how long they have done business in one of the seventeen states under your charge?

A. No, sir.

Q. You never even heard?

A. No, sir.

Q. The company has done business continuously in Missouri during the period, at least, that you have been associated with it?

A. I believe there was a period of suspension within my recollection of time.

Q. Do you know what time that was?

A. Should say it was along around —— around '13 or '14, although I would not attempt to say exactly.

Q. Now, you were with the company in 1929 and 1930?

A. Yes, sir.

[fol. 736] Q. Do you recall the increase of five insurance rates in the State of Missouri that transpired in January, 1930?

A. I have no knowledge of that.

Q. Your books did not show anything of that kind?

A. They would not show it in a form that would bring it to my attention, because I handle only premiums. I mean I handle premiums in the sense that they are on record, but in no sense as a computation as to what they would have been had the rates been different.

Q. Now, you say you are manager of a department which has within it a matter of losses, premiums and expenses for three seventeen state including Missouri. Did any information ever come to you in your office that there had been an increase in January, 1930, in insurance rates in the State of Missouri?

A. Not that I could definitely say. In a general sort of way, but I know nothing about that.

Q. What do you mean by "general sort of way"?

A. Well, I might have been told by some that the rate had been changed some place or other.

Q. Well, did you know it in this particular instance?

A. No.

Q. You did not?

A. No.

Q. Now, when you made those calculations the Court, did you in the computation of those losses anything about the 5 per cent increase in premiums?

A. No. No, I wouldn't notice that.

Q. You wouldn't notice that?

A. No.

Q. Have you any notion in dollars and cents what an increase of 15 per cent, or a decrease of 15 per cent, would [fol. 337] amount to in the annual insurance business in the State of Missouri?

A. No, sir.

Q. Have no idea and perhaps it would amount to as much as 3 million dollars each year one way or the other in the premiums?

A. No.

Q. As matter of that kind has never even come to your attention, and you know nothing about it?

A. No.

Q. Although you have made all these calculations?

A. Yes.

Q. In discussing a matter with counsel for the various companies concerned, did any of them suggest to you that there had been a change in rate in 1929?

A. No.

Q. You made your figures, then, having your thought entirely upon the gross premiums received, and then made your figures with reference to premiums earned, and so forth?

A. Yes, sir.

Q. Without regard to any change in the premium per year?

A. Yes, sir.

Q. Now, if a premium increase of 15 per cent went into effect tentatively speaking on January, 1930, I think you testified this morning that insurance usually runs one year, three years or five years?

A. Yes.

Q. When would that increase go into final effect, and by that I mean when would it generally apply if it was declared on the 1st day of January, 1930?

A. You ask me—I can say if it went into effect the 1st day of January, 1930, it would be noted in the January business, if it were noted at all. If the increase became effective January 1, that would be the effective date.

[fol. 338] Q. Perhaps you misunderstand me. From the

date that increased premium went into effect, naturally on new business you would write the increased premium—charge the increased premium, wouldn't you?

A. Yes.

Q. Because of the term insurance you write, what would be the effect of this increase in reference to when it would be generally applicable to your business—that is, on your books?

A. None that would be noticeable to me.

Q. Well, you mean by that that there would be nothing about the appearance of the business that would ever call to your attention the fact that there had been a 15 per cent increase in the rates of that state?

A. No.

Q. Now we have settled that. I am directing your mind now to another matter, and by that I mean, of course, that if the premium went into effect, the increase, on January 1, 1920, that on all new business written thereafter, the increased premium would be charged, wouldn't it?

A. Yes.

Q. But behind that date there was a large amount of outstanding term insurance, wasn't there?

A. Yes.

Q. Now, when would this advance of 15 per cent be generally applicable to the business carried upon your books?

A. Well, in some total, it would be noticed, of course, at the end of the year, when you would calculate the annual business.

Q. By that, you mean there would be a partial application of the increase upon your books, and it would appear there at the end of the year?

A. Yes.

Q. Partially, at least?

A. Yes.

[fol. 170] Q. And then from year to year it would appear on your books?

A. Yes.

Q. Until finally your term insurance which was in effect January 1, 1920, was entirely expired?

A. Yes.

Q. So that it would take a long time [illegible]

almost five years, for that rate to go into final effect, wouldn't it?

A. In that sense; yes, sir.

Q. Now, what—would you be interested in figuring the 5-year experience from 1917, January to 1921, by the fact that there was an increase in the rate on January 1, 1920, which only went into partial effect that year?

A. No, I would not be interested at all by a thing of that kind, because I would be dealing with totals only.

Q. I understand, but aside from the mathematical calculations you made, when you put down the figures which you claim represents the business of your company in the State of Missouri, you, in figuring an experience, would be influenced by this increase in rate?

A. Absolutely not.

Q. Why not?

A. Because, I would be dealing, as I say, with totals; and whether they were made up of amounts containing an increase or decreased rate, would not interest me at all.

Q. In arriving at the mathematical conclusion?

A. Yes.

Q. But in arriving at the justice of a rate?

A. Yes.

Mr. Polsmie: We object to the justice of the rate. He has not been propounded as a rate expert in any sense.

[fol. 240] Mr. Leahy: A purely hypothetical case.

Mr. Hogsett: And invading the province of the court, also.

Mr. Landis: I am asking him if, in arriving at the justice of a rate, he would consider the increased rate?

Mr. Leahy: We have a specific rate here.

Mr. Landis: No, we have two rates.

Mr. Polsmie: We are adverse to having this witness testify to what the future will have to find anyway.

Mr. Landis: There will ultimately come a time when the position of the insurance company will have to be considered by the future.

Mr. Hogsett: I can answer it right now.

Mr. Landis: And that is by witness, and not by counsel.

Mr. Hogsett: It is not for the witness, but simply the fact, and as to the position of the company, it is this: That the question of profit or loss must be determined as

defined by the statute, and that is by the experience during the 5-year period in question, and not by anybody's estimate or guess as to what might occur if another rate were in effect in the future. In other words, the statute is retroactive and not prospective in its scope.

Mr. Leahy: And holds fast to the period of five years preceding.

Mr. Barker: We had that question up the other day, and the referee passed on it the other day.

[fol. 341] The Referee: Will you read the question?

(Record read by the reporter.)

The Referee: It seems to call for the conclusion of this witness as to the justice of the rate, and that is the province of the court. I think the objection should be sustained.

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Now, Mr. Bush, I am asking you this question as an accountant: Whether or not an application of the present rate—if I am correct in stating that there was an increase January 1, 1920, whether or not an application of that rate to the business of the full 5 year period would bring you a result the same as that which you testified to before this referee, or whether it would bring you a different result?

A. I don't know.

Mr. Leahy: We object to that.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. You say you don't know, is that right?

A. No, sir. That is right.

Q. You mean to say to the referee, as I understand you, that if it is true that on January 1, 1920, there was this increase in rate, that the application of that for the full

5-year experience might or might not change the result, [fol. 342] and that you don't know?

A. Yes.

Mr. Leahy: Change the result when?

Mr. Jacobs: As he has testified to it today.

The Witness: The application of the rate, as I tried to say, has no bearing whatsoever on my figures. I am dealing with totals irrespective of rate increases or decreases, and I am not really——

Q. (Interrupting.) I understand. What you are saying is, that as an accountant, you are taking the figures as you find them. I am asking you whether or not, if there was an increase on January 1, 1920, of this amount, its application to the business of the 5-year period would have resulted in any change in the result you testified to today?

Mr. Folonie: We object to that on the ground it does not take into account, assuming it had any competency at all—it does not take into account what the mutations of the rate were, and whether it was on a fixed basis antecedent to that period, and, of course, if it assumes that the rate had been on a steady level up to a certain point and that an increase, and the volume of business remained substantially the same, it is self-evident that an increase of rate would change the figures—sometime in the future. Now, if the question asked for means that, why, it seems to me it is purely speculative and confusing.

Mr. Leahy: And it assumes that the amount for the 5-year period will be renewed for a period of three or five years at the advanced rate, and that the business will remain stable throughout the whole period despite mutations [fol. 343] of rate; and that the fire loss will remain stationary.

Mr. Jacobs: That is not what the question contemplates at all.

Mr. Hogsett: It asks for a self-evident proposition. If the rate were at a certain level up to January 1, 1920, and then were increased 15 per cent, he asks him to say whether that would make a difference in the figures. Well, of course, it would, if the volume was the same. Therefore, it asks for a conclusion of the witness upon a self-evident proposition.

The Referee: Objection overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still excepts.)

A. I would not attempt to answer it, because it is a matter of calculation to me. If there was a general increase in rate at any particular time, and the business went on and everything was renewed, why, then, of course, it is obvious that there would be an increase, or a decrease if it were the reverse.

Mr. Jacobs:

Q. You were confused by the objection of your counsel. What I asked you was whether or not the application of this increase to the business done for the past five years would have changed your result?

A. I couldn't apply it.

Q. You don't know?

A. I don't know a thing about it.

Q. Then you don't agree with your other counsel that it is a self-evident conclusion?

[fol. 344] Mr. Hogsett: Object to that.

Mr. Jacobs: Well, all right.

The Referee: Sustained.

Mr. Jacobs:

Q. Now, you say that you know nothing about that increase and, therefore, you know nothing about the events which surrounded that increase in the State of Missouri, and you are not in a position to testify concerning that matter one way or the other?

A. No, sir.

Q. With reference to re-insurance, Mr. Rush, what is re-insurance?

A. That is that form of insurance that comes from one company to another, either because—or goes from one company to another, generally speaking.

Q. In what way?

A. Well, for instance, our company takes a policy direct with the assured, and we transfer a part of our liability to some other company. We would re-insure a portion of our risk called "re-insurance ceded," as we term it. Now,

the reverse of that situation would be if the other company were to accept the direct loss and give our company a portion of it; that would be re-insurance received.

Q. Or assumed?

A. Yes.

Q. Now, in testifying this morning, you said something in arriving at your figures, about having added or deducted the business with reference to re-insurance, either ceded or assumed—you didn't use the—I believe you used the adjective "authorized" companies. Now, what did you mean by the word "authorized" as you used it this morning?

A. That is those companies which are admitted to do [fol. 345] business in the State of Missouri, as we understand it.

Q. Now, are you ready to testify as a fact that your company does not re-insure with the any company excepting authorized companies?

A. No, sir.

Q. You are not so ready to testify?

A. No.

Q. To that extent, in arriving at your conclusions this morning, when you made your additions and your deductions, you did not give a complete statement of what the situation may be to this court?

A. Well, the figures I gave this morning were on the basis of admitted companies.

Q. Only?

A. Yes.

Q. Now, there are in this country companies which do nothing but re-insurance, aren't there?

A. Yes, sir.

Q. And some of them may be admitted companies, and some of them may not be admitted companies?

A. Yes, sir.

Q. That's a fact, isn't it?

A. Yes, sir.

Q. And your figures, as you testified to them this morning, only contemplate the re-insurance which you did with authorized companies?

A. Yes, sir.

[illegible]

Q. And did not contemplate any business you may have done with unauthorized companies?

A. No, sir.

Q. Now, when you testified to the business which you did with the authorized companies, that means you testified to business which is done with companies authorized to do business in the state of Missouri?

A. Yes, sir.

[fol. 346] Q. And which, in turn, are required to make an annual statement report—an underwriting report and a tax report to the State of Missouri?

A. Yes, sir.

Q. So that as far as the premiums are concerned—and I want to ask you about another feature of it in a moment—there is a sort of a circle so that the premiums after the ceding and after the assuming is all done, amounts to the same thing as direct premiums in the beginning?

A. Yes, sir.

Q. That is when you deal with authorized companies?

A. Yes, sir.

Q. And that is what you testified "only" to this morning, isn't it?

A. Yes, sir.

Q. But when you deal with unauthorized companies there is no report in the State of Missouri from them, is there?

A. I don't believe so.

Q. And you would gather that, wouldn't you—if, they were not doing business as authorized companies in this state?

A. Yes.

Q. There is no way to check the condition of premiums and risks assumed or ceded, and losses paid and partly paid by other companies, when you deal with an unauthorized company, upon the reports on file in the office of the Superintendent of Insurance in Missouri, is there?

A. Well, I haven't examined those reports there.

Q. I am assuming that unauthorized companies make no reports?

A. They wouldn't be there then, of course.

[fol. 347] Q. And you don't tell the referee, and don't pretend to say, do you, that your company does not do business with unauthorized companies in the matter of re-insurance?

A. It so happens we haven't any unauthorized in my figures, but ——

Q. (Interrupting.) You specifically limited your figures to authorized companies?

A. Because my figures were all authorized and we did no business with unauthorized companies.

Q. You don't know that as a fact, do you?

A. Yes, sir.

Q. Didn't I ask you less than ten minutes ago, the specific question of whether you were able to answer that question, and haven't you testified in the presence of the referee within that time that you couldn't say?

A. I don't think so. I think what you asked me was, if my figures dealt with authorized companies and I believe I said "yes."

Q. I asked you that, and didn't I—I asked you if it wasn't a fact that they only dealt with authorized companies, and you said "yes."

A. Those figures do only deal with authorized companies.

Q. And I asked you whether or not you were in a position to say whether your company did business with unauthorized companies or only with authorized companies, and you said you were not in a position to say, didn't you?

A. Yes, that is so; but not with reference to Missouri.

Q. You are now saying, though, that you can tell about Missouri?

A. Yes.

[fol. 348] Q. Now, can you give the referee the names of the authorized companies that do business in the State of Missouri?

A. No.

Q. With whom you had re-insurance during the five years?

A. Not without a list before me.

Q. Did you investigate your list when you made this report?

A. Absolutely. They are investigated every year.

Q. At whose instructions?

A. That is a matter of checked information each year, with the list from the state.

Q. Were you instructed to make this investigation for this testimony?

A. No, sir; that is done regularly.

Q. By whom?

A. Under my jurisdiction in the office.

Q. In the accounting department?

A. Yes, sir.

Q. You mean by that, that the accounting department passes or investigates and keeps the records of the authorized and unauthorized companies?

A. Absolutely, yes.

Q. Of every state within your jurisdiction?

A. Yes, sir.

Q. And those records are in your office?

A. Yes, sir.

Q. Now, can you bring into this court your records showing the companies with whom you did re-insurance business?

A. Yes, sir.

Q. During the 5-year period?

A. Yes, sir.

Q. Will you bring them in tomorrow morning?

A. Certainly.

[fol. 349] Q. All right. Now, can you tell this referee from those books the companies with whom you did business?

A. Yes, sir.

Q. And the companies upon the business of which you based these figures this morning?

A. Yes, sir.

Q. All right. I wish you would do that, then, in the morning Mr. Bush, if you will.

Now, upon the matter of re-insurance: Every time that a company doing a general business but which takes, cedes or assumes business, and particularly assumes reinsurance, there is the added cost of carrying that business, is there not—the added overhead expense?

A. To whom?

Q. To whom—to the company carrying it. I am not talking about the split commission. I am talking about the overhead expense.

A. There wouldn't be any added overhead to our company on ceded business, for instance.

Q. Well, that is because you give it away?

A. Yes.

Q. But you assume business?

A. Yes.

Q. But when you cede part of a policy, your overhead expense with reference to that particular policy is not decreased a penny, is it?

A. Yes—not overhead.

Q. What I am talking about is on the overhead. It doesn't make any dieffrence if you cede three-fourths of the policy, your expense will be the same?

A. Yes.

Q. But when you assume business, your expense is increased, isn't it?

A. I don't think so.

Q. Your overhead is increased by the volume of business you do, isn't it? I thought every policy is an increase in [fol. 350] your overhead?

A. When you allocate expenses and premiums in that sense, yes; but on direct business, no. It would be the same.

Q. Do you allocate expenses on re-insurance between companies—overhead expense?

A. I am talking about general premium receipts, but I don't believe that would increase it; the overhead.

Q. Well, one policy wouldn't of course, but one policy added to another until you had an aggregate of business which came in in the shape of assumed re-insurance, that finally increases your overhead because the volume increases the overhead, doesn't it?

A. I will concede that on that point, yes.

Q. Then there is an increase in overhead expenses in handling re-insurance, isn't there?

A. Possibly.

Q. Not only "possibly," but it is a fact, isn't it?

A. I wouldn't testify it is a fact, but I will concede possibly there would be.

Q. I believe you testified you would not state that as a fact?

A. I wouldn't wish to, because I don't know. I haven't figured it, but using your illustration, it would seem that way; and I, therefore, would not care to state it as a fact since I don't know about it.

Q. But you know, don't you, as a practical insurance man, and particularly since you are in charge of the department

that keeps tab on all expenses and cost of operation, that an increased volume of business would naturally result in an increased overhead, wouldn't it?

A. It would be so inappreciable that I wouldn't notice it. It might be there, and might not.

[fol. 351] Q. That all depends upon the amount of the increase, doesn't it—in the volume? It means additional bookkeepers, doesn't it?

A. No.

Q. It means additional field supervisors?

A. Not with us, it would not; until the volume became of a sufficient size to warrant it. What little we do is done without additional help.

Q. Why is it done without additional help, because you haven't hired anybody recently, because of your increase in re-insurance business?

A. I mean I haven't added anyone on as an employe to take care of the re-insurance that we do.

Q. Reinsurance is not a new thing, is it?

A. No.

Q. Reinsurance has been going on in your office for a long time, ever since you have been there?

A. Yes.

Q. You would not be adding anybody now because of a sudden acquisition of reinsurance business, would you?

A. Not unless the volume became sufficiently large to warrant it.

Q. Your whole expense is based on the total volume of your business, including reinsurance, which has been going on for years, hasn't it?

A. Yes, sir.

Q. If, then, it is a fact that as a practical matter, reinsurance from the standpoint of ceded reinsurance, does not increase the original overhead where there is retention of any part of the policy; but does increase when the volume becomes reasonable in size—does increase the expense of the company assuming the insurance. Then there is an increased cost in doing business when you reinsure with other companies, isn't there?

[fol. 352] Mr. Leahy: We believe it would be fair to this witness for him to state what that increase is, and not alone in volume; because the increase of reinsurance only

applied to one building or several buildings with one area would make no difference. Now, this illustration should include the number of towns and the kind of buildings and the amount of increased reinsurance, perhaps, that he would get; and then, perhaps, he would get an answer that would be of some probative force. This sort of inquiry is simply argumentative.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs: Answer the question.

The Witness: Will you read the question, please, Mr. Blume?

(Question read by the reporter.)

A. Well, all I can answer is about my own experience, and that is, that so far as I can recall now, we have made no additions to clerical help or other office expenditures by reason of the reinsurance that we assume. I can only speak from my own company's experience. That might not be so with other companies, but I do believe it is with us.

Q. Have you employed new help in the thirteen years you have been with the company?

A. Yes.

Q. Bookkeepers, field supervisors, and so forth?

A. Yes.

Q. Many of them?

A. Yes.

[fol. 353] Q. And you have increased your office force, haven't you?

A. Materially.

Q. You wouldn't say that was done on the business entirely, independent of reinsurance, and that was done on—but that was done upon the increase of all of your business of all kinds, wasn't it?

A. My particular department has been affected not at all in that period of time. There has been one employee that has been handling the accounting features of the reinsurance for a number of years. I don't believe that I have ever had more than one on it at any time.

Q. You mean to say that you have so separated your reinsurance that one person attends to all that, and nobody else has anything to do with it?

A. In the underwriting department, yes.

Q. In the what?

A. In the accounting department.

Q. You are not connected with underwriting department, are you?

A. No.

Q. Are any other employees used except the bookkeeper in underwriting business—I mean, in reinsurance business—if you know?

A. Well, I know as a general matter, of course. Daily reports come through the examiners—as reinsurance. In that sense, they would handle it.

Q. Do you think it requires any of the time of anybody connected with the company to handle reinsurance?

A. An inappreciable amount.

Q. Very inappreciable?

A. Yes.

[fol. 354] Q. Do you have any idea what percentage of your business is reinsurance?

A. Very small; very small with us.

Q. Do you know what it is?

A. Not offhand. I wouldn't attempt to state.

Q. You included it in your report to the state of Missouri, didn't you?

A. Yes, sir.

Q. Have you always included it?

A. Yes, sir.

Q. I notice when your reports are originally sent out, that you reported only on return premiums on your annual reports, and then there is written in in small ink an item covering a reinsurance. Do you recall that—looking over your annual reports?

A. I don't recall which report you refer to.

Q. The ones made during a period of, say, 1920 to 1921, or any of those years, to the State of Missouri?

A. I don't recall that.

Q. You combined there your return premiums and reinsurance business?

A. Oh, I guess I remember now what you mean. Yes, the blank calls for returns——

Q. (Interrupting.) Now, I am looking at your report for 1921. Your annual statement of the Aetna Insurance Company, and ask you if it is a fact that during the year 1921, your company assumed $5,878,012.75 worth of insurance?

A. For the entire company-

Q. For the Aetna Company.

Mr. Hogsett: You mean throughout the country?

Mr. Jacobs: Yes. This is for the whole country.

Mr. Hogsett: Yes, sir.

[fol. 355] Mr. Jacobs:

Q. You don't know that?

A. No, sir.

Q. And that your total business for that year for the whole company was $21,909,000?

A. I don't know that.

Q. Well, I will get you to look at it and see if that is a fact, if your reinsurance did not amount to over a quarter of your business, in 1921? Now, look at it (exhibiting document to witness).

Q. Is this your reinsurance?

A. Yes.

Q. And what is that, ceded or assumed?

A. Ceded.

Q. And what is this?

A. That is the net premiums.

Q. This is your total business, isn't it?

A. Total net business.

Q. And what does that amount to?

A. Twenty one million dollars.

Q. What does this amount to, and I am pointing at your reinsurance assumed?

A. $5,878,000.

Q. What per cent is that of your total net premiums?

A. About 25 per cent.

Q. And more?

A. Yes.

Q. Closer to about 27 or 28 per cent?

A. Yes.

Q. So, as far as that part of your business is concerned, it is more than inappreciable, isn't it?

A. Very much so.

Q. What is this, on this page?

A. Ceded. This account is ceded reinsurance.

[fol. 356] Q. That is the figure I gave you a moment ago—that is ceded reinsurance, and the other figure is total net premiums for that year?

A. Yes.

Q. Now, on page 3 of your company's report for that year, show me the amount of assumed reinsurance for that year?

A. I can't find it.

Q. Can't you? A. Here it is. Isn't this reinsurance right here (indicating)?

A. That is reinsurance, but not premiums.

Q. I asked you for the reinsurance assumed by your company for 1921.

A. I can't give it to you.

Q. Well, Mr. Hyde says it doesn't show on here. Are you in position to give us the amount of the assumed reinsurance for 1922 done by your company?

A. No, sir.

Q. Will it equal or anywheres near equal the amount of ceded reinsurance for that year, if you know?

A. I don't know.

Q. Well, you are not ready to say that the assumed business is inappreciable, are you?

A. I don't know anything about those figures.

Q. This is the report of your company, isn't it?

A. That is for the entire country.

Q. But so this figure is I gave you, showing the total net premiums for the United States.

A. Yes, sir.

Q. And your reinsurance in the shape of ceded business is something like 27 or 28 per cent of your total net premiums for the United States?

A. Yes.

Q. So you wouldn't say that that was inappreciable, would you?

A. No, sir.

[fol. 357] Q. Now, do you feel that there might be some little increase in handling expense—overhead expense in handling reinsurance with your company?

A. That might be so, but as I said before, I wouldn't care to state because I don't know.

Q. Well, if you knew the amount of assumed business, you could hazard a sort of a conclusion of some kind on it, as a business man and an official of this company, couldn't you?

A. Well, I might make a guess, but it wouldn't be worth anything to you.

Q. Can you find out the amount of the assumed business? (No answer.)

Q. Now, the net result of reinsurance as a business matter is to increase any overhead expense, isn't it?

A. I don't know.

Q. You have to handle the business twice, don't you?

A. That is what the——

Q. (Interrupting.) That is what has to be done, isn't it?

A. Might possibly be so, but as I say, I haven't personally found any increase to it, so what some other company's experience might be would be a conjecture on my part.

Q. Can you get the figures for the assumed insurance, say, for 1921 for your company?

Mr. Folonie: You mean for the United States?

Mr. Jacobs: Yes, for the United States.

A. Well, I would imagine it could be ascertained, but I wouldn't care to answer that without communicating with the home office, because I don't know what they do down [fol. 358] there. I could give it to you for my states here, or for the State of Missouri, but I could not speak for the company.

Q. Do you know the total net premiums of your company for Missouri for 1921—total net premiums of your company for 1921?

A. Well, I have them turned in there.

Q. Give them to me, will you please, if you can?

Mr. Hogsett: Missouri, Mr. Jacobs?

Mr. Jacobs: Yes; 1921, in Missouri.

A. $596,315.17.

Q. How much is—what is the percentage of $83,912.56 to the total amount of business for 1921?

A. That looks like about 15 per cent, roughly speaking.

Q. And better, isn't it?

A. About that, I should say.

Q. Now, look at this report, and I will ask you if your assumed business for 1921 was not $83,912.56?

A. Yes, sir.

Q. So that your assumed business in the State of Missouri for 1921 was between 15 and 20 per cent of your total net business, wasn't it?

A. Little over 15, I should say, roughly speaking; yes.

Q. And that is more than an inappreciable amount of business, isn't it?

A. Yes, more than an inappreciable amount of business, but does not require very much of an increase appreciably in clerical help.

Q. Now, in handling this reinsurance: Your ceded business was something like 27 or 28 per cent of your total, and your assumed business was something like 15 or 16 or 17 [fol. 359] per cent of your total net business in Missouri. Now, there is business that goes through two hands instead of one, in each instance?

A. Yes.

Q. Because the office that has ceded to you—the business that is ceded to you was handled by another company, wasn't it?

A. Yes.

Q. And the business which you ceded to some other company is handled by you and by them?

A. Yes.

Q. And it may be that business is ceded or assumed through the hands of more than two companies; isn't that right?

A. Possibly.

Q. So the overhead is increased by the reinsurance, isn't it?

A. I wouldn't answer that any different than I did before.

Mr. Hogsett: Is it the position of the defendant, Mr. Jacobs, that the principle of reinsurance is wrong, and ought to be abolished?

Mr. Jacobs: The position of the defendant is that the additional expense of reinsurance is not a proper charge to make in arriving at a rate. That is the position. It is

a matter based upon an increase in expense which defendant contends is not a proper charge in arriving at a rate; that doubling or the trebling of expense, or whatever it may be—on that particular insurance.

Mr. Jacobs:

Q. Now, in arriving at your figures this morning, Mr. Bush, and today, which you have given to the court, you have included regulated as well as non-regulated insurance?

A. Yes, sir.

Q. Now, by non-regulated insurance, you mean insurance where the rates are not regulated in the state of Missouri? [fol. 360] A. That is my understanding of it; yes, sir.

Q. And I mean "regulated" is that classification which is regulated in the matter of rates in the State of Missouri?

A. Yes.

Q. Now, this rate which is the subject of this inquiry, is a rate directed against what is called the regulated insurance of Missouri, isn't it?

A. That is my understanding of it; yes, sir.

Q. Now, would you tell the court why you included in your figures the experience of the non-regulated insurance?

A. Well, I was getting up figures for the total of the state, and made no attempt to divide it between regulated and non-regulated classes.

Q. You understood when you were making these figures that you were including non-regulated business?

A. Yes, sir.

Q. And you understood that this inquiry was directed to a rate applying to regulated business in the State of Missouri; that's a fact, isn't it?

A. Yes, sir.

Q. Now, did the fact that there was an uncommon loss ratio in your non-regulated insurance affect you in arriving at these figures?

Mr. Hogsett: We object to that as an assumption, having no basis in the evidence.

Mr. Jacobs: Well, we will show you in a minute by your report. I will show you that it is more than 100 per cent on your non-regulated, in some classes.

Mr. Folonie: We object further that it is an argument with the witness.

The Referee: Overruled.

[fol. 361] (To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

(Question read by the reporter.)

Mr. Leahy: Your Honor, for another reason, we object. There is nothing in the statutes that provides this cannot be taken into consideration, whether regulated or not regulated; whether an employee belongs to a union or does not belong to a union makes no diference.

Mr. Jacobs: Of course, that is a matter which we had up when Mr. Leahy wasn't here, a couple of weeks ago; and Your Honor passed on that matter at that time; because there is going to be a sharp conflict between counsel as to whether the law limits this proposition.

The Referee: Perhaps I should say for Mr. Leahy's benefit that, at the opening of this hearing, or very shortly thereafter, the referee announced that his rulings in the admission of evidence would be very liberal.

Mr. Leahy: Yes, I noticed that in reading the record.

The Referee (continuing): For the obvious reasons, I deem it wise to pursue that policy. Counsel on both sides, I suppose, understand that in view of the character of this case and the position which I now hold, I would admit much that I would not admit if I were guided solely by my own judgment respecting the law applicable to the matters at hand.

[fol. 362] Mr. Jacobs: And this particular matter is a matter which is not yet presented, and which, Your Honor will admit subject to presentation of it.

The Referee: The objection is overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs: Will you read the question now?

(Question read by the reporter.)

A. No, sir.

Mr. Leahy: That question assumes a fact, too, that the witness is not advised of.

Mr. Jacobs: Well, he has already answered the question, Your Honor.

The Referee: Go ahead.

Mr. Jacobs:

Q. Now, Mr. Bush, I am going to ask you to look at the report of your company made in 1921: this means, doesn't it, that it is for the experience of 1920?

A. Yes, sir.

Q. And is entitled "Underwriting Experience by classes for Missouri," and signed by the president of your company, and attested?

A. Yes, sir.

Q. Will you tell the referee what your experience was with reference to all automobile business: First, with reference to the premiums, and second with reference to the losses paid.

Mr. Folonie: We object to it as improper subject of inquiry, and not relating to any proper issue herein.

The Referee: Overruled.

[fol. 363] (To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Read the figures off, please.

A. (reading) "Automobile premiums, $22,505; losses, $24,557."

Q. Or more than 100 per cent loss ratio, wasn't it?

A. Yes, sir.

Q. On automobiles?

A. Yes, sir.

Q. Now, in arriving at your loss ratio this morning, you included an item considerably over 100 per cent upon that particular classification—automobiles, didn't you?

A. Yes, sir.

Q. Now, I will give you your report for 1921, made in early 1922. That is your company; State of Missouri; underwriting experience; and will you tell the referee the

amount of money which you received for automobile insurance in 1921?

A. $31,000 in premiums; $31,086.

Q. How much were your losses?

A. $43,280.

Q. What per cent is that?

A. Over 100; possibly ——

Q. How much over 100 per cent?

A. 140 or 150 per cent.

Q. About 140 per cent loss ratio on your automobile business for 1921?

A. Yes, sir.

Q. Now, that was included in the loss percentage which you figured for the referee this morning?

A. Yes, sir.

Q. Have you got any such loss ratio on any regulated business in the State of Missouri? If you have, show me [fol. 364] which one it is?

A. Unless possibly a goodly part of that on the automobile was on the fire business.

Q. You know that, as a matter of fact, covers collision as well as fire, don't you?

A. Yes. All forms of automobile are in that, but I am not prepared to state what the various portions of it are. However, I would say that a goodly portion of it was fire and theft and very little collision; a little collision I should say.

Q. Isn't collision one of the most fruitful sources of automobile loss?

A. Well, I think so, but with reference to our company, we have written in Missouri very little collision automobile; mostly it has been fire and theft.

Q. You wouldn't say to this court what percentage of that loss ratio is for fire alone, would you?

A. No, I don't believe I will.

Q. Now, when you write policies of insurance, Mr. Bush, is there inspection made for the value of the property?

A. I really couldn't speak with reference to that, except in a general way, I know that there are some inspections made. I hear about them over in the office, but I don't know to what extent.

Q. Now, let us clearly understand this: I am not talking about inspections made subsequent to a loss, nor am I talk-

ing about a classification, but I am talking about inspection of the property before the policy is issued relative to the value of the property.

A. Yes. There are inspections made.

[fol. 365] Q. Now, can you bring any records, say, for example the daily agency report which will show inspection of property for value before the issuance of a policy—or any other records you may have?

A. Well, I have no custody of those inspection records.

Q. How is that?

A. I say I don't have them in my possession, and they do not come within my jurisdiction. That is an underwriting matter emanating from the underwriting department, but they are sent out to the respective field men from time to time, I do know that, although how consistently, or how many, or to what extent, I am not prepared to answer.

Q. Well, you would know that, if it was a regularly established business policy of your company that a property would be inspected for value before the issuance of the policy, wouldn't you?

A. No, not necessarily.

Q. You wouldn't know that, you say?

A. No.

Q. Now understand I am not referring to any inspection after loss or after a fire or whatever a loss may be. On household goods, you insure them against fire, don't you?

A. Yes, sir.

Q. Will you tell this court whether or not your company inspects that property for value before it issues the policy?

A. I would not attempt to state that as a definite matter of fact, no.

Q. Was your personal property which is insured against fire inspected for value before it was insured?

Mr. Leahy: We object to that.

Mr. Folonie: He doesn't live in Missouri.

Mr. Jacobs: Read them the question.

[fol. 366] The Referee: Of course, you mean the personal property on which this company has issued insurance?

Mr. Jacobs: Surely.

The Referee: He may answer.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

A. No.

Mr. Jacobs:

Q. Now, Mr. Bush——

Mr. Hogsett (interrupting): Are you talking about the property this witness owns himself?

Mr. Jacobs: Yes.

Mr. Hogsett: That is not what the referee had in mind.

The Referee: No. I asked the question whether or not your question related to personal property insured by the Aetna Insurance Company.

Mr. Jacobs: Surely. I told him wherever it might be.

Mr. Hogsett: He is asking Mr. Bush if his own personal effects were inspected by the company that wrote it.

Mr. Jacobs: The Aetna Company.

Mr. Hogsett: Yes. Before it issued a policy; his personal property. Your Honor evidently thought he was talking about the property the Aetna Insurance Company insures generally.

The Referee: I did so understand the question.

Mr. Jacobs: He says he carries a policy with the Aetna Insurance Company; that there is—that is, he says it in a [fol. 367] general way in answer to this question. I asked him if his property was inspected.

The Referee: He may answer it. Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs: He has already answered it and said "no."

The Witness (answering question): No.

Mr. Jacobs:

Q. Now, do you think, Mr. Bush, since you have had a 13-year intimate connection with this company that this is the common policy of your company, that your experience represents the common policy of the Aetna Company in writing fire insurance on personal property?

Mr. Folonie: We object to that. This witness, if he has personal property, is presumably in the State of Illinois, where there is no valued property——

The Referee: Read the question.

(Question read by the reporter.)

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs: Answer the question.

A. What the company might do with my own personal—inspection with reference to my own personal property might not follow with reference to inspection of other people's property, but as a general proposition, what other companies do, I assume that we all go along about the same. [fol. 368] Now, that is my assumption. That is the best answer I can give you of it, because I am not in a position to judge correctly or know definitely.

Q. Does that answer contemplate the activities of other companies? I will ask you whether or not your experience represents the policy of your company with reference to writing insurance upon personal property?

A. I would say I don't know as to that.

Q. You don't know?

A. No.

Q. So you don't know whether your company inspects for value before issuing a policy or not?

A. Positively no; as a statement of fact, no.

Q. You don't know. Very well. It may be that your company writes insurance upon personal property without any inspection whatever for value?

A. Might be so, yes.

Q. Is there any record which you can bring before this court showing inspection of personal property for value in the State of Missouri, before the issuance of a policy?

A. None in my possession.

Q. And you have within your possession all the matters relating to expenses, losses and premiums for the State of Missouri?

A. Yes, sir.

Mr. Jacobs: Very well.

Mr. Leahy: May I ask him just one question there?

Mr. Jacobs: Why, yes, as far as I am concerned.

Mr. Leahy: Can you inform the court as to what would be the approximate cost or expense of making a personal [fol. 369] inspection of every piece of personal property that is insured—an appraisement?

A. I wouldn't attempt to state. It would be very much, I should say, but——

Mr. Leahy (interrupting): What portion of your business is written on personal property in Missouri?

A. That I couldn't tell you offhand either.

Mr. Leahy:

Q. Well, if each of the pieces of personal property that are insured were inspected, and every piece of real property was inspected, and an appraisal was had of personal property, it would increase your expense account several hundred per cent, wouldn't it?

Mr. Jacobs: The defendant objects to that, in the light of the witness's statement that he knows nothing about it.

The Referee: Objection sustained.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. To advert just a moment to reinsurance, taking your answer upon your experience and upon your general knowledge of the business, isn't it a fact that it is generally understood in the insurance business that there is about a 4 1/2 5 per cent increase in expense because of reinsurance?

A. I couldn't answer that.

[fol. 370] Q. You wouldn't say that is a fact, would you?

A. I couldn't say it is not a fact, nor would I say it was a fact.

Q. Now, with reference to inspection of real property in the State of Missouri, is there an inspection of real property for value before a policy is issued in the State of Missouri?

A. I don't know.

Q. You never heard of it, did you?

A. No.

Q. I want to talk to you a little bit about the question of expense, bearing in mind, of course, that you only had in your office direct expense, and that you have received from the home office the question of allocated expense—that is right, isn't it?

A. Yes, sir.

Q. The direct expenses to which you have testified are expenses paid directly on business done in the State of Missouri?

A. Yes, sir.

Q. And allocated expenses are the expenses which have been allocated from the home office?

A. Yes, sir.

Q. And the state—that is, to the State of Missouri, according to the ratio between the amount of premium business done in Missouri and the total business of the United States of your company?

A. Yes, sir.

Q. Now, will you tell the court whether or not the allocated expenses which you receive from your home office in Hartford contemplate all expenses of the home office?

A. Why, they are in the annual statement, and from that point of view, I should say "yes," but not from my own personal knowledge. I did not build them.

Q. But as far as you can go, you have testified to allocated expenses today?

A. Yes, sir.

[fol. 371] Q. And your understanding is that the allocated expenses contemplate all kinds of expenses in the home office?

A. Yes, sir.

Q. Namely, the underwriting expenses?

A. Yes, sir.

Q. The investment expenses?

A. Yes, sir.

Q. The banking business—banking expenses?

A. Yes, sir.

Q. The overhead expenses of the home office?

A. Yes, sir.

Q. The salaries paid?

A. Yes, sir.

Q. From president down?

A. Yes, sir.

Q. Real estate investments?

A. Part of that I allocate here. No, real estate expense allocated.

Q. Well, that is not correct, is it?

A. Yes, sir. In my calculations this morning, it is.

Q. You mean by that you took out the expense—what kind of expense? When you received an allocation for the State of Missouri from the home office, was it a lump sum?

A. No, sir.

Q. It was divided into sections?

A. With your permission, I will refer to a paper here, and perhaps I can give you a better idea from that.

Q. What do mean by real estate expense? Maybe, we can get over that point without delaying too long on it.

A. Well, that item is shown in the annual statement under that caption.

Q. Taxes?

A. No, taxes—no taxes except the corporation tax. The franchise tax, and there are several——

[fol. 372] Q. (Interrupting.) Quite sure of that?

A. In my calculations this morning; yes, sir.

Q. What do you mean by franchise tax?

A. There is an item in our statement called the Connecticut Franchise Tax.

Q. Well, that was allocated, wasn't it?

A. Yes, sir.

Q. And your Federal taxes were allocated, weren't they?

A. No. The 1 per cent premium tax only.

Q. No other Federal tax? No surtaxes?

A. Now, don't trip me there—because there is a little tax, I believe, in there; but I don't want to answer you offhand. There was a United States capital stock tax allocated in there.

Q. That is allocated?

A. Yes.

Q. Any excess profits tax allocated?

A. No, sir.

Q. Any surtaxes allocated?

A. No, sir.

Q. Now, I am talking about your reports to the State of Missouri. I am, of course, referring to your sworn statements to the State of Missouri.

A. To the underwriting exhibit.

Q. The underwriting or annual statements, either one, or tax report.

A. Well, with reference to that underwriting experience by classes, I believe at the time that was made, that the allocation of those items you mentioned were in there. You were asking me in answering these questions what I put in my figures here this morning, and I was answering it two different ways.

Q. Now, what was your idea in taking out of your sworn statement to the State of Missouri certain figures when [fol. 373] you made your statement here this morning?

A. Well, at the time that statement was made up, we attempted to give——

Mr. Leahy (interrupting): What statement?

A. The underwriting experience by classes, to which counsel now refers, filed with the Missouri department.

That we attempted to give, to the best of our knowledge, as to the requirements. That is, many of the items in there—not many, but several of the items that are in there, that I consider improperly allocated, were omitted from my calculation here.

Mr. Jacobs:

Q. You mean by that, then, that there should not be an allocation of surtaxes in Missouri?

A. I eliminated it here; yes, sir.

Q. You think there should not be a——

Mr. Hogsett (interrupting): That calls for a legal conclusion. He is asking for his legal opinion as to whether it ought to be included or not.

The Referee: Objection sustained.

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Well, you did not, as a matter of fact, include any surtaxes or excess profits taxes in your allocation to Missouri?

A. No, sir.

Q. Why?

A. Because I did not consider that they should go as a part of the expense that I was allocating.

[fol. 374] Q. Why?

A. I did not believe they were properly to be included.

Q. How?

A. I did not believe they were properly to be included in the calculation I was making. It was more of an investment expense—something that did not pertain to the general running of the company.

Q. Your investment expenses along other lines were included?

A. No, sir.

Q. You testified that they were a little while ago; that these allocations included investment and banking expenses, didn't you?

A. Possibly so, but I did not include them in these figures I gave this morning.

Q. Do I understand you to say that you have separated the expenses sent here from the home office which were allocated to Missouri?

A. Yes, sir.

Q. Well, what have you charged in your allocation to Missouri?

Mr. Folonie: You mean in his testimony here?

Mr. Jacobs: Yes, any testimony this morning.

A. Well, the first one that I have is traveling expenses other than field, as shown in the company caption.

Q. That is one you allocated to Missouri?

A. Yes, sir. The next one is loss adjustment for the first two years, 1917 and 1918. If you will recall, I said that I didn't have them for the first two years.

Q. Yes.

A. "Home office salaries," as shown by the annual statement. "Rent," as shown by the annual statement. "Furniture and fixtures," as shown in my annual statement.

"Maps." "Inspections and surveys," which amount is strictly too, I believe, the National Board, and some other [fol. 375] items. "Postage." "Legal expenses." "Advertising and printing." "Federal tax, income." "United States capital stock tax." "State corporation tax." "Connecticut franchise tax." And in the 1917, there were several smaller items of electricity, gas, janitor, lunch, subscriptions—those are the items which I allocated.

Q. Now, with reference to your item of "rents," those are rents paid in Hartford?

A. Yes, sir.

Q. And other places

A. Yes, sir.

Q. Now, are those rents for buildings which housed the investment and banking operations of your company?

A. I don't know.

Q. Well, now all right. You don't know. You can't say, then, that you took out the banking expense to that extent, can you?

A. No, sir.

Q. Now, how about postage? That is general postage of the company, and may have been used for banking operations, investment operations or underwriting work?

A. Yes, sir; I would say so.

Q. So you don't know about that?

A. No, sir.

Q. Now, how about salaries? Those salaries which are allocated? They are all the salaries from president down in your home office and other places?

A. I should say so; yes, sir.

Q. You don't say that it does not include salaries for the men engaged in the investment and banking end of your business?

A. I don't say one way or the other. I would say it included all of the salaries.

[fol. 376] Q. You don't say to this court that you did not include in this allocation the expense for banking and investment operations of your company?

A. Not from that point, no.

Q. Now, what was it that your company sent you to be allocated, that you took out?

A. Those are the items I allocated.

Q. They sent you—your company sent you the expense list?

A. No, I took them from the annual statement.

Q. Now, then, what was it you took out?

A. Well, I wouldn't attempt to guess them right here, but you might take them and check them, if you wish to. I might cover that this way: I took out every item that had no portion of our own direct expenses, and took out real estate, repairs and taxes, and I think some of the excess profits tax, or something of that sort, that is shown in the statement.

Q. Outside of that, you included everything in your report which appeared in this report?

A. Yes, sir.

Q. When I say "this report," I mean the report of Missouri?

A. Yes, sir.

Q. Were you careful to see in your reports that there was no allocation to Missouri of expenses which had already been directly charged to Missouri?

A. Yes, sir.

Q. Well, now, this report here. Here is the report for February, 1922, which would mean 1921, wouldn't it?

A. Yes, sir.

[fol. 377] Q. Now, I want to call your attention to Item No. 11, "Inspections and surveys." That is the one you were talking about a little while ago?

A. Yes, sir.

Q. And discussed and testified to this morning. There is your total amount for the United States, $469,017.86?

A. Yes, sir.

Q. That is every bit of that expense that you spent in the United States?

A. Yes, sir.

Q. Now, here is—that is an allocated expense?

A. Yes, sir; but not in my figures here. Allocated there, yes.

Q. It was allocated in the annual sworn statement that your company made to the State of Missouri?

A. Yes, sir.

Q. Upon which the question of rate was to be fixed, wasn't it?

A. It was allocated in that expense blank.

Q. And amounted to $12,912—it's there?

A. Yes, sir.

Q. Look up above, item 5, "Inspection and Rating Bureau expenses," A direct charge of $12,000?

A. Yes, sir.

Q. That is a direct charge of expense to the State of Missouri?

A. Yes, sir.

Q. And that is included in this allocated charge of $469,000, isn't it?

A. No. I think that was the way that was calculated that year. It was taken out of the full amount, and then the balance allocated.

[fol. 378] Q. Taken out and then you allocated the balance?

A. Yes.

Q. And you allocated similar expenses all over the United States and other states, didn't you?

A. Such states as we make those reports in.

Q. In other words, if the State of Illinois had a direct charge of that kind, of, say, $15,000, or $20,000 or $30,000 whatver it might be it would be included in this amount of $469,000, wouldn't it?

A. Yes.

Q. Would be allocated to Missouri?

A. Yes, sir.

Q. Although Missouri had been directly charged with the full amount of her own expense along that line?

A. Yes, sir.

Q. So that you have two items in here: One charged to Missouri in the amount of $12,000 as a direct expense of inspection, haven't we?

A. Yes.

Q. And then we have in the same column another allocated charge for the same work of $12,912?

A. Yes, sir.

Q. In other words, Missouri paid her own, according to your annual sworn report—as a direct expense?

A. Yes.

Q. And then took an allocated share of all the other states?

A. Yes.

Q. That's right.

Now, this is 1921 (producing another document), 1921: But, of course, is for 1920, being the underwriting experience by classes of the Aetna company in the State of Missouri.

Mr. Folonie: 1920.

[fo. 379] Mr. Jacobs: Yes, dated 1921, for the year 1920. This is marked 1921.

Mr. Jacobs:

Q. Now, I will get you to look at this list and tell the court if Item 15 entitled, "Federal Income Tax" does not amount to $849,614.62?

A. Yes, sir.

Q. That is the total Federal income tax for the United States?

A. I believe so. I believe that is right.

Q. This sum that I called your attention to, 800 odd thousand dollars, is the total sum for all the United States, isn't it?

A. Yes, sir.

Mr. Folonie: What item is that?

Mr. Jacobs: Fifteen.

Mr. Jacobs:

Q. Now, look at item 4 on the same page, which is entitled "Federal gross premium tax," and see if it is not a direct charge to the State of Missouri of $6,788.88 for that year?

A. Yes, sir.

Q. Now, that sum of money which Missouri paid, are the direct expenses included in there?

A. In there.

Q. In Item 15, $849,000, isn't it?

A. Yes, sir.

Q. And then is allocated again to the State of Missouri, isn't it?

A. Yes, sir.

Q. And the amount is $12,442.50 in the way of allocation of expenses?

A. Yes, sir.

Q. So Missouri paid this direct tax once, didn't it?

A. Yes.

Q. In the sum I read to you, 6,700 odd dollars?

A. Yes, sir.

Q. Then you took that money and put it in the general expenses for the United States, and allocated it back to Missouri?

A. Yes, sir.

[fol. 380] Q. So they paid it once as a direct tax and once as an allocation?

A. Yes, sir.

Mr. Folonie: You don't mean they "paid" it, but that that is the allocation—I mean that is the calculation.

Mr. Jacobs: That is the calculation that you charged to Missouri in the matter of expense.

Mr. Jacobs:

Q. Now, Missouri paid their direct tax of 6,700 odd dollars. They also paid an allocation on that same sum of money on the total expense of the United States didn't they?

A. Yes, sir.

Mr. Folonie: We object to the form of the question; that they "paid" it.

Mr. Jacobs: I mean that they were charged with it.

A. Yes.

Q. Now, in addition to that, all the other direct taxes of that same kind paid by the other states were included and Missouri paid her allocated share of them, or was charged with her allocated share?

A. The Government—United States tax?

Q. Yes.

A. Yes, sir.

Q. So Missouri paid about three times—was charged three times on that matter?

A. Yes, sir.

Q. Well, that ought to be about enough.

Now, Mr. Bush, we have got an understanding on some of these items with reference to expense; and what allocated expense covers as applied to the State of Missouri. Did you or do you figure in your profits or losses the earnings of your company?

A. No, sir.

Q. Your investment profits?

A. No, sir.

[fol. 381] Q. Your earnings or interest upon unearned premium reserve?

A. No, sir.

Q. As I undersand your position, the expenses of these operations are charged to the State of Missouri, but the profits are denied the State of Missouri in figuring your figures?

Mr. Folonie: We object to that as an assumption.

The Referee: Overruled. You might say "omitted" instead of "denied."

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Put it "omitted."

A. I will answer that by saying I omitted them.

Q. Yes. All right. Now, I want to ask you something about this other item that I almost forgot; for the year 1921. I see where Missouri was charged under article or Item 17 of your underwriting report, "miscellaneous real estate taxes and repairs,"—now, was that in the State of Connecticut?

A. That was everywhere according to the annual statement; yes, sir.

Q. And Missouri received an allocation on that?

A. Yes, sir.

Q. That included the home office and everywhere else, and all kinds of expenses for that purpose?

A. Yes, sir.

Q. Right under that is "Connecticut Stockholders' Tax." That was $211,842?

A. Yes, sir.

Q. Now, you charge part of that to the State of Missouri?

A. Yes.

[fol. 382] Q. $5,611.78?

A. Yes.

Mr. Folonie: You are still talking about the underwriting blank?

Mr. Jacobs: Yes.

Mr. Jacobs:

Q. And that was an expense that you charged against the State of Missouri?

A. Yes, sir.

Q. Now, in your Connecticut franchise, you charged against Missouri $1,521?

A. Yes, sir.

Q. Did you charge those things in your figures in your testimony today?

A. No, sir.

Q. You left out which, of these I just read to you?

Mr. Folonie: What are you reading now?

Mr. Jacobs: I am reading for 1921.

A. I charged that $55,283.43, Connecticut franchise tax. That portion goes in.

Q. How much did you charge Missouri?

A. That last item.

Q. You charged the franchise tax in Connecticut, or a proportionate part of it to the State of Missouri?

A. Yes, sir.

Q. As a proper charge against Missouri? As an item of expense? Now, the company that is operating under that franchise is not only doing an underwriting business but an investment and banking business for profit, isn't it?

A. I understand so. Yes, sir, I presume it is; yes, sir.

Q. Do you know whether or not any of those expenses which were received by you from the home office included any charitable donations?

A. No.

[fol. 383] Q. One way or the other?

A. Except that first one that is labeled, "war fund."

Q. Was that allocation made to Missouri?

A. Yes, sir.

Q. In your figures today?

A. Yes, sir.

Q. How much was that amount?

A. I believe $5,000.

Q. To Missouri?

A. No; just to the allocated portion of it.

Q. Part of that?

A. Yes.

Q. Anything in the way of feeding employees?

A. Yes. In 1917, I allocated an item shown in the annual statement under "Lunches, etc."

Q. And that was at the home office. How much did that amount to; do you know?

A. I believe $27,000.

Q. About $27,000?

A. Yes.

Q. And that was charged against the State of Missouri?

A. Yes, sir.

Mr. Polonie: Ratable part of it.

A. Yes, sir.

Mr. Jacobs:

Q. Entertainment?

A. I don't believe that is set up separately, so I can't speak on that.

Q. Now, you don't know, as a matter of fact, that these expenses which came in from the home office did not include items for entertainment, do you?

A. No, sir.

Q. If they did, they are allocated against the State of Missouri, aren't they?

A. Yes, sir.

[fol. 384] Q. Mr. Bush, have you any variable rates of commissions for agents in the State of Missouri—your company?

A. Possibly I don't understand that question.

Q. Are your commissions to agents uniform in the State of Missouri?

A. They are as to each agent. There is one exception, I believe, to that. Otherwise, they are the same.

Q. All over the state?

A. Yes, sir.

Q. Is there any difference in the commissions paid in locations?

A. I believe St. Louis is the only exception to that. Otherwise, they run——

Q. (Interrupting.) What proportion of your total business is done in the City of St. Louis in the State of Missouri?

A. I couldn't estimate that.

Q. Isn't it a fact that about 33⅓ per cent of the total business done by the Aetna Insurance Company in the State of Missouri is done in the City of St. Louis?

A. I am sure I don't know offhand. I wouldn't attempt to say.

Q. But, at any rate, there is a difference in the commissions in St. Louis and the balance of the state?

A. Yes, sir.

Q. What is the difference?

A. Five per cent. I believe it is 5 per cent; yes. Five per cent and—state it 5 per cent.

Q. Is there an additional 5 per cent for supervision?

A. Yes.

Q. That makes 10?

A. Yes.

Q. Now, have you got any addition to that—a contingent commission?

A. Yes.

[fol. 385] Q. How much does that amount to?

A. Five per cent on the so-called profits of the agency.

Q. Does it ever run over 5 per cent—this contingent?

A. Never more than 5 per cent; no.

Q. Well, am I right in saying, then, there is a difference of 15 per cent between St. Louis and the balance of the state with reference to agents' commissions?

Mr. Folonie: I object to that as confusing, because the commission ratios which he mentioned first are computed on commissions, and he says the other 5 per cent excess is on the profits, which is still a different thing, and we object, therefore, to attempting to add the three together.

The Referee: The witness may answer, making such explanation as he desires.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. That is, it never run very high. There would be a 5 per cent—10 per cent difference and plus whatever the contingent ran.

Q. Ten per cent plus the contingent?

A. Might be 2 or 3 per cent, but it would increase over 10 per cent.

Q. Now, why is there a difference in the commissions paid of from 10 per cent up in the City of St. Louis from the balance of the State of Missouri?

A. Well, I wouldn't attempt to say that except possibly it is because it is an excepted city for some reason or other, and they pay greater commissions there than they do other places. I wouldn't say why.

[fol. 386] Q. Did you say accept or except?

A. Except.

Q. Well, what do you mean by that?

A. Excepted, in the sense that the commissions are different than they are in the other portions of the state.

Q. You can't give any reason for that?

A. That is something that was there when I came into the business, and I don't know why it is.

Q. The net result of it is to increase in the expense ratio—the expense ratio in the State of Missouri to that extent?

A. Yes, sir.

Q. I believe I asked you about earnings on investment, didn't I?

A. Yes, sir.

Q. Now, I want to ask you something about your general policy of figuring. You say that you figure earned premiums, don't you?

A. Yes, sir.

Q. And do you figure paid losses?

A. Yes, sir.

Q. In arriving at a result, I mean, that you testified to this morning.

A. I used paid losses in arriving at that result.

Q. Only as a method of figuring to get to what?

A. To the incurred losses.

Q. To the incurred losses. Now, you base your question of profit or loss on earned premiums?

A. Yes, sir.

Q. Incurred losses?

A. Yes, sir.

Q. And incurred expenses?

A. Yes, sir.

Q. That's right, isn't it?

A. Well, I qualified this morning on incurred expense. I said I used the paid expenses in that sense. In other words, I did not work up an incurred expense figure.

[fol. 387] Q. Do I understand then that the figures upon which you based your testimony today are based upon paid expenses?

A. Yes, sir.

Q. Why did you use paid expenses in arriving at a result?

A. Because I knew of no items that were set up at either the beginning or end of the year as affecting the State of Missouri.

Q. Did you make an investigation?

A. No.

Q. Now, by incurred losses, do you mean that at the beginning of your 5-year period, you add or subtract the losses carried over?

A. Well, at the beginning of the period, you would add in.

Q. You add them, don't you?

A. Pardon me, I will reverse that. At the beginning of your period, you have an outstanding loss; you take your paid losses, add the outstanding at the end of the period, and subtract——

Q. (Interrupting.) At the first of the year, what did you do about your outstanding losses? Add them or subtract them?

A. For what purpose?

Q. Well, for the purpose of giving the testimony you gave this morning in arriving at a loss or profit percentage?

A. I deduct.

Q. You subtract or deduct?

A. Yes, sir.

Q. And at the end of the period, what do you do?

A. Add in.

Q. Oh, yes. Now, on an ascending scale of business, would your losses which you added at the end of the year, be greater or less than the losses which you subtracted at the first?

A. I don't know. It would depend upon how the losses were running on the business. If they were running higher, [fol. 388] an ascending scale of business would send them up.

Q. I am talking to you from a practical standpoint and directing your attention particularly to the Five years in question. Were the losses which you added at the end of the period greater or less than the losses which you subtracted at the beginning?

A. They were greater, I believe.

Q. You had an ascending scale of business, didn't you?

A. Yes, they were greater.

Q. You had an ascending scale of business?

A. Yes, sir.

Q. And it would be natural to expect that the losses would be greater, wouldn't it?

A. Yes, sir.

Q. And as a practical matter, they were greater?

A. They were actually greater.

Q. How about your premiums; when you start out on your premiums, do you add or subtract at the beginning?

A. Add.

Q. At the end what do you do?

A. Subtract.

Q. Now, on an ascending scale of business, are the premiums which you subtract at the end of the period greater—

Mr. Hogsett: Don't you mean unearned premium?

Mr. Jacobs: I am talking about written premiums.

The Referee: You refer to unearned premium?

Mr. Jacobs: Yes, of course.

Mr. Hogsett: You keep saying "premium." That is why I suggested that.

[fol. 389] Mr. Jacobs:

Q. Are they greater or less than the ones you add at the beginning—on an ascending scale of business?

A. On the average, I should say greater.

Q. They couldn't help but be, if there was an ascending scale of business, could they?

A. They might. I couldn't say as to that.

Q. Then your business would not be ascending, would it?

A. Might be ascending, but more of it earned.

Q. What was it, as a practical matter?

A. I think greater at the end—I know it was greater at the end than at the beginning.

Q. So, as I understand your system of figuring from the standpoint of earned premiums and incurred losses, you take away at the end a greater sum of the premiums than you add in the beginning?

A. Yes, sir.

Q. And you add at the end a greater sum of losses than you subtracted at the beginning?

A. Yes, sir.

Q. So you get us both coming and going, on both premiums and losses, don't you?

A. Yes, sir.

Mr. Folonie: We object to that as argument.

Mr. Jacobs: Well, he said "yes."

The Referee: It's immaterial; it is an argument—it is a deduction. Mr. Bush, does that apply to an ascending business only?

A. Well, really, it would be hard to say, but your business might drop off, I should say, and it would be possible for the earned premiums to run up, or vice versa. Sometimes, if your losses were very light at the end of the year, you would have nothing to carry over. It might be very [fol. 390] much less at the end of the year than at the beginning. It depends upon the particular year. Really it is hard to get.

Mr. Jacobs:

Q. But the practical fact of this particular 5-year experience was as you testified?

A. Yes, sir.

Q. Now, when you are arriving at earned premiums, are you arriving at that on the basis of averages?

A. Proration; yes, sir.

Q. Because that—these particular matters intervene about which you talked, namely, a peculiar situation with reference to losses, or something of that kind——

A. I say that I figured the earned premiums in this particular statement the way I did, because it is the only way I knew how to figure them, and irrespective of the result I was going to produce, I attempted to figure what the earned premiums were.

Q. And you reached them by a system of averages?

A. Yes, you would call it that; a proration.

Q. In other words, that is a system that you had to resort to in order to reach earned premiums?

A. Yes, sir.

Q. Now, you recall what your loss ratio was for the State of Missouri for that period?

A. For the 5-year period?

Q. Yes—I don't mean losses; I mean expense ratio.

A. On that basis?

Q. Yes.

Q. On the basis of this?

Q. Yes.

A. That was 42½ per cent.

Q. Forty-two and one-half per cent?

A. Yes.

[fol. 391] Q. By that, you mean that every $100 worth of business cost you, in the way of expense to Missouri, $42.50?

A. Yes, sir.

Q. Did you, and do you think that is a reasonable expense ratio?

Mr. Folonie: We object to it on the ground that the same is not a proper cross examination, and on the ground that the witness has not been produced as an expert upon the property of the expense items, but only as to calculation as to what they in fact were.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Why, I should say that in my poor way of gauging it, that it was about a fair run of expense. It represents commission payments, so that the difference, between the commissions running 10 or 12 per cent, it seems to me, would be a reasonable expense.

Q. That is, for the handling of a contract—that is what the insurance business is, isn't it?

A. Yes, sir.

Q. Now, Mr. Bush, the net result of your method of figuring losses and profit ratios by means of earned premiums and incurred losses and paid expenses, from the figures that

you have actually developed, is that that system is to ostensibly reduce the ostensible profits, and increase the ostensible losses; isn't it?

A. Well, it was done for the purpose of trying to arrive at an accurate result, as near as I could get at it.

[fol. 392] Q. I say, that the practical result of it——

Mr. Hogsett (interrupting): That is a conclusion, pure and simple. Reduce it from what? The question is unintelligible.

Mr. Jacobs: The witness hasn't said so.

Mr. Hogsett: The effect of it is to reduce it "from what?"

The Referee: Read the question.

(Question read by the reporter.)

Mr. Jacobs: The result is a matter of accounting, of the system which you employed, namely, the earned premiums, incurred losses and paid expenses, is to reduce the ostensible profits or increase the ostensible losses, isn't it?

A. No, I would say not.

Mr. Hogsett: Object to it for that reason.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. What do you say?

A. I would say not. I did it for the purpose of trying to ascertain what the figures——

Q. (Interrupting.) I am not asking for your purpose. I am asking you if it is not—if that is not the practical effect of it. Isn't that the effect of it?

A. Reduce it then from what?

Q. Well, say what way it would be if you employed a system of paid premiums or written premiums, paid losses and paid expenses?

A. It might or might not, over the period compared, have the effect you mention, but not necessarily, so I should not say.

[fol. 393] Q. I am talking about this 5-year period, about which you prepared this report, 1917 to 1921, inclusive.

A. Well, I haven't compared it, so I can't say.

Q. But you testified as a practical matter your deductions at the end of premiums were greater than the additions at the beginning, didn't you?

A. Yes, sir; I did.

Q. And the reverse with reference to losses, didn't you?

A. Yes, sir.

Q. Well, isn't the practical effect of your figuring to reduce the profits or increase the losses over—if you used the paid system of losses and the written premiums?

A. Yes.

Q. That is what I asked you. Now, you have an unearned premium reserve, haven't you?

A. Yes, sir.

Q. That unearned premium reserve is held by your company, isn't it?

A. Yes, sir.

Q. Is there a hidden profit in the unearned premium reserve?

A. I don't know.

Q. Well, lets look at it. You are an insurance man, aren't you? Do you require all of your unearned premium reserve to pay losses—or to pay return premiums?

Mr. Leahy: Pay losses and return premiums?

The Referee: You mean to pay return premiums, do you not, Mr. Jacobs?

Mr. Jacobs: Yes.

Mr. Folonie: I think counsel is proposing to reframe his question, probably.

[fol. 294] Mr. Jacobs: I am reading from your annual statement of the Aetna company for Missouri for the year 1929, ending December 31, 1929. You had total unearned premiums, $21,083,854.94?

A. Yes, sir.

Mr. Jacobs:

Q. Is there or is there not a hidden profit in that sum of money?

A. None that I could see.

Q. You have no idea of a hidden profit in that sum?

A. I should say that sum was the nearest possible calculation to what was unearned.

Q. I will ask you, then, Mr. Bush, if it is not generally considered and if you don't know it to be a fact, as a practical insurance man, that that sum of money contains in it a profit to the company of from 30 to 40 per cent?

A. I do not.

Q. And you have never heard that?

A. No, sir.

Q. Don't know anything about that?

A. No, sir.

Q. Now, on the unearned premium reserves, you have paid full agency commissions, haven't you?

A. Yes, sir.

Q. And they are charged upon your annual reports to the state of Missouri?

A. Yes, sir.

Q. As an expense against the state of Missouri?

A. Yes, sir.

Q. And they amount to what percentage?

A. Well, roughly, say 25 per cent.

Q. About 25 per cent. But according to your testimony, as I understand you——

[fol. 295] Mr. Folonie (interrupting): Of the written premiums, that would be.

Mr. Jacobs: Yes.

Q. According to your testimony, as I understand you, there can be no consideration at arriving at the experience in the state of Missouri of any earnings on the unearned premium reserve?

A. I would say that, yes, if I understood your question?

Q. Now, why didn't you use the system of paid losses in arriving at your conclusions, instead of incurred losses?

Mr. Leahy: Your Honor, that question seems to be incompetent—he has used the correct system and got the correct answer.

The Referee: Overruled.

Mr. Barker: Then this lawsuit is over right now.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Will you read him that question, Mr. Blume?

(Question read by the reporter.)

A. Because I was attempting to arrive at the correct result, and incurred losses would be, I should say, the correct method of entering a loss charge in my computations, rather than paid.

Q. Well, if you are going to use that with reference to losses and you say these advance payments and all expenses are made, why didn't you credit the state with expenses paid ahead?

[fol. 396] A. Because I knew the net reserve that was set up for in Missouri, incurred expenses—which would not follow with reference to Missouri losses. Missouri losses were outstanding and set up.

Q. But, you say you have paid out expenses in advance for, say, agency commissions?

A. Yes, sir.

Q. Now, that covers the whole situation, both of earned and unearned premiums?

A. The advance commissions, however, would be in the paid commissions.

Q. Would be what?

A. In the paid commissions.

The Referee: Read me that answer.

(Answer read by the reporter.)

Mr. Jacobs:

Q. But that is charged on the unearned premiums as well as the earned, isn't it?

A. Yes, sir.

Q. And it is charged against the state, the full amount, isn't it?

A. Yes, sir.

Q. Mr. Bush, on the question of incurred losses, you receive notification of estimates on losses, don't you?

A. Yes, sir.

Q. From your agents, in their daily reports, or whatever they are—monthly reports?

A. Yes, sir. I don't receive this report personally in my department. I couldn't say as to that. But they come into

the office. My figures contemplate the outstanding or unpaid losses, and paid losses.

Q. And your figures—well, that would contemplate all losses that you have received estimates on, wouldn't it?

A. Yes, sir.

[fol. 397] The Referee: I think we may take a recess of ten minutes now.

(Which was accordingly done, after which the following proceedings were had:)

Mr. Jacobs:

Q. Now, Mr. Bush, you receive an estimate on your losses from your agent?

A. Yes, sir.

Q. You enter them on your books?

A. Yes, sir.

Q. Now, how do you handle them with reference to figuring your incurred losses in arriving at your conclusions that you testified to this morning?

A. Well, we draw a line at a certain specified time, at the close of the year, we will say. Now, here—there are two columns in the loss book: One, the estimated, and one the amount paid. If the estimated is known—that is, if the estimate is—if it is the actual loss; if the actual loss to be paid is known on any loss where an estimate has been made, for the purpose of closing our outstanding, the estimate that was originally entered in, the total of which has never been made, is changed.

Q. That is, when you learn the actual amount paid?

A. Yes, sir.

Q. What would you do if you didn't learn the actual amount paid?

A. We would use the amount originally entered which is the estimate.

Q. And that is universally larger than the actual amount paid, isn't it?

A. Generally speaking, yes.

Q. And you have frequent instances where the losses are not paid, haven't you? For example, in the case of litigation, for a long period of time.

A. There are instances of that kind; yes, sir.

[fol. 398] Q. Sometimes there is litigation which results in perhaps paying their estimated loss, and sometimes the litigation results in an adjustment at some time?

A. Yes, sir.

Q. And sometimes it results in not paying the loss at all?

A. Yes, I should say that would——

Q. (Interrupting.) And all this time that loss is carried on your books and charged so, against the state of Missouri, according to the estimate?

A. Yes, sir.

Q. On what basis did you figure loss and profit?

A. On just that basis that you had there, which was earned premiums, losses—incurred losses and expenses. The difference between those being the profits.

Q. Well, by the way, if you can use the system of paid expenses, can't you use the system of paid losses?

A. Well, there is a difference there, because with reference to losses there is actually a reserve set up by the company on the books, of unpaid losses. That does not hold with reference to Missouri so far as it has come to my knowledge. I do know that the outstanding losses of Missouri is carried into the total of the company, because I furnished those, but I furnished no figure of an outstanding expense.

Q. But you could figure paid losses, couldn't you?

A. I could figure that; yes, sir.

Q. And you could give on your books as a mathematical proposition, credit without expenses paid in advance, couldn't you?

A. None that I know of with respect to Missouri; with [fol. 399] one possible exception: Of the one you mentioned of commissions on the unearned premiums. You mentioned that one.

Q. Commissions for agents?

A. On unearned premiums, you asked me about that.

Q. And couldn't you on commissions paid to agents?

A. We could, but don't do it.

Q. No. Now, let me call your attention to another one: I am reading from your underwriting report for 1921: "Advertising and printing, $291,930.98." Now, that covers the United States, doesn't it?

A. Yes, sir.

Q. Of which Missouri's part, your charge is $8,036.86?
A. Yes, sir.
Q. Now, that printing and stuff of that kind may run on into other years and follow into other years, may it not?
A. Understand that is a paid figure—that one there.
Q. But this is paid in advance, perhaps, for printing or for stuff of that character—supplies that were used in the following year or two years?
A. Oh, yes.
Q. But there is no credit given to Missouri in charging expenses along that line, is there?
A. No, sir.
Q. The following—the full amount is immediately charged against the state for that year?
A. Yes, sir.

Mr. Folonie: In that blank.

Mr. Jacobs:

Q. That is the way you figure it, don't you?
A. Yes, sir.
Q. To get back to the question, you have detailed your method of arriving at profit or loss. Do you figure on your [fol. 400] total volume of business?
A. I don't believe I understand the point of your question.
Q. When you arrive at a loss percentage or a profit percentage, do you figure against the total volume of business done?
A. I figured it against the earned premiums.
Q. The earned premiums?
A. Earned premiums.
Q. You don't figure it against the total volume of business done?
A. No, sir.
Q. If you collected a certain amount of premiums during the year, do you figure upon those premiums?
A. No, sir.
Q. You figure on the premiums earned?
A. Yes, sir.
Q. Have you ever figured on the question of capital stock?
A. No, sir.
Q. Why?

A. Well, I have never had anything to do with it and I have never considered it had anything to do with this particular statement, and some thing out of my jurisdiction.

Q. Now, if you were figuring the dividends for your company, would you figure the dividends upon your premiums earned or upon your capital stock?

A. Well, the method of calculation there, I should say, would be a profit shown by the trading statement of the company, which you know would anticipate incurred losses and earned premiums, and determine what amount had been made and what proportion of that could be paid in dividends, and that dividend payment might be considered 1 or 2 or 5 or 10 per cent on capital. I don't believe it is al [fol. 401] located on the basis of percentage to capital; capital surplus, or anything. I think it is probably done the other way: That is, they arrive at the profit and then decide to pay out a certain amount, and that amount is a percentage of whatever figure you might term it.

Q. What I want to get at is, how they would arrive at that amount. Would you take the amount of capital stock and figure what your profit would be, or would you base it upon volume of business?

A. I should say you would take your trading statement and set up your earned premiums, and charge against it your expenses and your losses, etc., similar to the method we have, and arrive at the balance, and if there was a profit there, you could pay it out.

Q. Well, but upon what would you figure whether there was a profit? Suppose your company now is—has an outstanding capital stock of how much? Five million?

A. Yes.

Q. What percentage of that stock is chargeable against Missouri?

A. None that I know of.

Q. Well, you have to include it in your reports, don't you?

A. I don't include it in my report.

Q. Well, the reports made to Missouri. Don't you allocate expenses to Missouri in any of your reports?

A. That underwriting experience by classes there is a call for it down at the bottom, that underwriting experience by classes. I put in there what—as near as I can get—what

I understand is wanted; filled in there to answer that question.

[fol. 402] Q. Well, how would you reach the allocation of capital stock, by comparing the amount of business done in the state of Missouri with the amount of total business of the United States?

A. Yes.

Q. Well, as a matter of fact, that is a little less than 3 per cent for Missouri, isn't it?

A. Yes.

Q. About 2.75 per cent?

A. Somewheres around there.

Q. Something less than $150,000 for a year, or say, $750,000 for the five years; that's right, isn't it?

A. That calculation would be right.

Q. That is about 3 per cent?

Mr. Folonie: We object to assuming the capital stock would be varied, and that you can multiply it by the number of years. At that rate, you would have 25 million dollars of capital for five years.

Mr. Jacobs:

Q. Well, take it for a year. Of course, if you were figuring a 5 year experience, you would have to charge Missouri with five times your allocation of capital stock for a year, or you would be cheating the company, wouldn't you—if you would figure profit or loss percentage? In other words, if you would figure it against just one year, $150,000 would not reflect the true condition from the standpoint of the company, would it?

A. I make no calculations with reference to that at all, nor do I attempt to. Of course, you can juggle figures any way you wish to.

Q. Well, I am not very apt at juggling figures. What I am asking you is this: Apropos of Mr. Folonie's statement that if you were figuring five years' experience, in justice [fol. 403] to the company you would have to figure that five times over, wouldn't you?

A. I don't see at this moment any application of that. Possibly I am not sharp enough to see your point.

Q. You have got an allocation of 3 per cent, $150,000

capital stock allocated to Missouri. On the basis of a capitalization of 5 million dollars; haven't you?

A. Yes; $150,000 would be 3 per cent of that.

Q. And that is really a little more than should be charged against Missouri, isn't it? In other words, it ought to be about 2.75 instead of 3.

A. Well, I don't charge any portion of the capital stock to Missouri, so I don't——

Q. Well, you know it is provided in the underwriting report, don't you?

A. I know it is asked for, and that is why it is in there.

Q. And it is put there, isn't it?

A. Yes.

Mr. Leahy: But is it used as capital? How was it figured?

A. Well, they outlined a method there of taking the outside revenues and determining what proportions those bear to that capital, and apply that portion into Missouri. That is the method there, but further than that I wouldn't attempt to go.

Mr. Jacobs:

Q. Well, that is not exactly accurate, is it?

A. I wouldn't say so. I was just generally speaking.

Q. You testified, didn't you, that you compared the amount of business done in Missouri with the amount done all over the country?

A. To get the expense; yes, sir.

[fol. 404] Q. And you would use the same method if you were allocating capital stock to Missouri, wouldn't you?

A. Yes. I don't know why you should allocate capital stock, but using that I should say "yes," if you wish to do it.

Mr. Leahy: There isn't any allocation of capital stock in that underwriting experience by classes. I think counsel is confused. It is an allocation of interest earnings.

The Witness: Interest earnings on capital stock.

Mr. Jacobs:

Q. Now, if you did a certain amount of business, say $150,000 worth of business, and you paid every expense in

the world in the state of Missouri, and had left $15,000, what would you figure the percentage of your profit was?

A. If you had left—it would be 10 per cent. I think; $150,000—on your $150,000.

Q. Worth of business.

A. If that is what you wish to compare it to.

Q. Well, I am taking $150,000 as the business done for the year in the state. Now, are you figuring the 10 per cent against the business done or against the capital stock which would be allocated to Missouri?

A. Well, the only figure of profit that I made or attempted to make was with reference to the percentage of profit or loss to earned premiums.

Q. I understand, but I am asking you if you would be figuring that—if that is based upon the volume of business done, $150,000 worth of business?

Mr. Hogsett: He just answered it.

[fol. 405] Q. Or whether that is figured against the $150,000 worth of allocated capital stock?

Mr. Folonie: Object to assuming he has done either one, or that there is any $150,000 figure in it.

The Referee: He may answer. Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still excepts.)

A. I say I figured no profit on the basis or calculated no percentage on the basis of capital stock.

Mr. Jacobs:

Q. Then you figured it against the amount of business done?

A. Against the earned premiums.

Q. Would that be $150,000?

A. Well, that would be—my earned premiums for the period.

Q. Now, do you think it would be a wrong and improper method of accounting to figure that against the allocated capital stock?

A. Really, I don't see what the connection would be, but——

Q. Well, I am just asking you to answer the question.

A. I don't know.

Mr. Leahy: That is an assumption not predicated on any evidence, or that will be put in evidence.

Mr. Hogsett: They are erecting a pure fiction out of their own minds as a proper method of counting profits when there were no profits. The whole thing involves a fallacy when you analyze it that is not warranted by the law or the blanks which call for this information, or anything else except their own invention.

[fol. 406] The Referee: I think counsel understand on each side the difference of the conflict between counsel as to the correct method as to calculating profits. Now, the witness has testified to the method which has actually been used in computing profits. He is now being interrogated with reference to the results which might be obtained by the use of a different method or different basis. I think it is fair cross examination. You may answer it.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Whether or not you would consider it an improper method of accounting to figure that matter against the allocated capital stock?

A. Well, I have never analyzed it or given it any thought and I shouldn't answer the question. I would say I don't know, because I haven't analyzed it or given that, and haven't used it.

Q. Do you know the ordinary, regular method of business concerns in figuring a profit, as an accountant?

A. Well, it is similar to our own method, I would say they were similar. I don't know——

Q. (Interrupting.) Now, when a business house does a certain volume of business in a year, and has left over a surplus after the payment of expenses at the end of the year, is it your understanding, as an accountant, that they

take that surplus and apply it to the total volume of business done in order to arrive at a dividend?

A. I could say that they might apply it to any figure [fol. 407] that they might care to. If they cared to say that figure was a certain percentage of the capital or a certain percentage of the business done, to answer some particular question. I think it would be fitting, but I don't think it is arrived at by taking any portion of what the capital might be, or any proportion of what the business might be.

Q. Well, you have got to arrive at it in some way.

A. You arrive at it from the nearest known actual result, which is using the figures of the period—that will produce a result, and that result may be proportionate to anything that you might wish to compare it to.

Q. Well, you are in business and you have $100,000 capital stock, and you do $100,000 worth of business in a year, and at the end of the year after you have paid all your operating expenses, you have $6,000 left. What would be your percentage of profit?

A. The percentage of profit would be 6 per cent.

Q. On what?

A. On $100,000.

Q. And which $100,000?

A. $100,000 of business done.

Q. All right. Now, suppose that you had $100,000 worth of business, and you did $50,000 worth—that you had $100,000 capital stock, and that you did $50,0000 worth of business during the year, and you paid all your expenses of operation and had $6,000 left. What would be your percentage of profit?

A. Your percentage would be relative to—if you cared to compare it to the business done, it would be that proportion of the business done.

[fol. 408] Q. Six per cent?

A. No; that would be 6 per cent of your capital. It might be 3 per cent of your $50,000. It might be some other——

Q. (Interrupting.) But you figured it on the amount of business done, didn't you?

A. I said that the profit that you mentioned of $6,000 was 6 per cent of the business done—of $100,000.

Q. But this year, you did $50,000 worth of business. What would be your percentage of profit?

A. Compared to the business done?

Q. Well, I am asking you how you figure it.

A. Oh. I would ask you—have to ask you a question in turn. If you referred to the volume of business done it is 3 per cent, I should say. Now, if you asked me if that profit is 6 per cent of the capital, I would say "yes."

Q. I am not asking you to give me an alternative: What I am trying to arrive at is your method of accounting. Now, with your $100,000 capital stock and your $50,000 worth of business, and your $6,000 surplus at the end, what was your percentage of profit—that you would have if you were figuring it as an accountant?

Mr. Folonie: We object because it confuses the corporate profit and the underwriting or business profit.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. In answer to that question, but any way, I would say always, please tell me what comparison you wish. Is it [fol. 409] to capital, is it to the business done, is it to your net earnings, or to what?

Mr. Jacobs:

Q. I don't want any comparison. I want your method—what you say the percentage of profit is under those conditions. $100,000 capital stock; $50,000 worth of business, with a surplus at the end of the year after all expenses are paid of $6,000.

A. I would answer that by saying that $6,000 of profit made in that period was 3 per cent of $50,000 or 6 per cent of $100,000.

Q. Well, that is true as a mathematical fact.

Mr. Folonie: That is what you asked him.

Q. You testified before, when I gave you the capital stock and the amount of business done the same, that is was 6 per cent, didn't you?

A. I stated it was 6 per cent of $100,000.

Q. No, wait a minute. You said 6 per cent, didn't you?

A. Of either of those two figures.

Q. Now, wait minute. You said 6 per cent. Now, didn't I ask you specifically what you were figuring it against, and you said the amount of business done? Didn't you testify to that just a few moments ago?

Mr. Folonie: Object to that on the ground the record will speak for itself.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I would answer it according to the best of my understanding: It would be that $6,000 would be 6 per cent of [fol. 410] your $100,000, or 6 per cent of the capital $100,000.

[fol. 410] Q. Well, which one; which way would you go if you were figuring the percentage of profit?

A. I would arrive at the $6,000.

Q. You have got that to start with. We want the percentage of profit.

A. That is what I would be at.

Q. What is the percentage of profit?

A. I would produce my profit, and then when I got my profit——

Q. (Interrupting.) You have got that, $6,000. Now, what is your percentage of profit?

The Referee: Assuming the stated facts. That matter has been assumed as existing.

A. I believe I have answered that question as nearly as I can answer it.

Q. What I want to ask you is, if I can make myself clear, now you have got $6,000 profit and you are figuring the percentage of profit, and would you figure that against the volume of business done, or capital stock—you are figuring it now as an accountant.

The Referee: For the purpose of declaring a dividend?

Mr. Jacobs: Yes.

A. Well, I think there is a great many things that would enter into that. There is the matter of calculation. As a matter of calculation, I would arrive at my profits first. That is what I would do.

Mr. Leahy: Then you would want to declare a dividend.

[fol. 411] The Witness: Then I would want to declare a dividend, and if I were the whole concern and voted that I would pay $3,000 of that out as a dividend, I would then say that I was paying 3 per cent out on the capital.

Q. Well, how do you figure the dividend on the capital?

A. I would say that you figure your dividend and arrive at your dollars and cents, and then allocate it on the basis of the percentage to whatever you might wish to compare it to.

Q. How do you figure a dividend unless you figure it against either your capital stock or volume of business? How do you know what your percentage of profit may be?

A. I don't believe you have arrived at your profit by taking and saying it is 6 per cent of your capital or surplus or anything else. You arrive at a profit, a known figure.

The Referee: Q. Assume as true, Mr. Bush—this I understand is the gist of counsel's question—that a corporation has a capital stock of $100,000, and that in a given year it has done $50,000 of business; that at the end of that year's business it has $6,000 net profit; and that you as an accountant then desired to ascertain what amount of dividend the company could pay out of the profits. How would you tell me?

A. Comparing that to capital, Your Honor?

The Referee: Q. Well, that is the question that is up to you.

A. Well, I would say you would pay 3 per cent of your capital if you cared to pay the $3,000 out.

[fol. 412] The Referee: Q. Do you understand the question? The capital is $100,000, and net profit $6,000.

A. I beg your pardon. I thought it was $3,000.

Mr. Jacobs: $6,000. What would you figure 6 per cent?

A. I would figure that that was 6 per cent of—if you say compare it to capital, yes.

Mr. Jacobs:

Q. If your capital was $50,000.

The Referee: I assumed $100,000 capital and $50,000 volume of business. I propounded the question on the assumption of $100,000 capital stock, $50,000 representing the volume of business done, $6,000 representing the net profits at the end of the year, and a desire to distribute that $6,000 in the form of a dividend. Now, then, what per cent would the dividend be? I understood that to be the gist of Mr. Jacobs' question.

A. I would say that would be 6 per cent of the capital stock.

Mr. Jacobs:

Q. What percentage of profit did the company make?

A. $6,000 would be 6 per cent of the capital stock.

Q. How much would the company earn that year—what per cent of earnings would the company earn? I use the word "earn" as coming within the purview of the statute.

A. Earn 6 per cent on its capital stock.

Q. You figure, then, against capital stock in this instance?

A. Well, that is kind of a horse after the cart. I figure the $6,000 first, and then compare it back.

Mr. Hogsett: I submit we are spending a lot of time here just quibbling and on a matter that will aid this court not one whit in determining the issues here. The fundamental [fol. 413] question is whether or not there was a profit or loss. That is the thing. It is not a question of the per cent of profit or capital allocated to this state or that, but was there any profit or loss. Now, he is quibbling over terminology and that can in no way aid the court in arriving at the crucial question of whether there was a profit or loss.

Mr. Folonie: I think we might well admit that $6,000 is 6 per cent of $100,000 and it is 12 per cent of $50,000; we admit it.

Mr. Hogsett: And for dividend purposes, you call it 6 per cent.

Mr. Barker: We should explain the meaning of our statute when it says as to the earnings of the company.

Mr. Hogsett: It is a question of whether or not there were earnings.

Mr. Barker: That is right. Quite a difference between the two.

The Referee: I think you have pursued the question sufficient for you to understand.

Mr. Jacobs:

Q. Now, I am reading from the annual statement of your company, the Aetna Insurance Company, for the year 1921; item 6 on page 8, and ask you if it is a fact the total dividends declared since commencing business, cash, $43,751,365.

Mr. Folonie: We object, if the court please, to any inquiry on the question of dividends as entirely foreign to any proper issue here, and that the further inquiry as to the [fol. 414] corporate earnings of the company are improper because the statute, if so construed as to take into account the earnings of the company other than those derived from the conduct of the business in Missouri, would be in contravention of the Constitution, taking of property without due process of law, confiscation——

The Referee: There is an unreasonable search and seizure clause——

Mr. Folonie: No, there is another one I have here. That if it were so construed as to require plaintiffs to account for interest earnings on their invested capital, upon their capital and surplus and their business in states other than Missouri, it would be in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States, and that such construction of the statute would render it confiscatory, would deprive the plaintiffs and each of them of their property and property rights without due process of law; it would deny to them an equal protection of the laws and would, if so construed, be unconstitutional and void and in violation of Section 30 of Article 2 of the Constitution of the State of Missouri, and that it would render it confiscatory and deprive the plaintiffs and each of them of their property and property rights without due process of law.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 415] Mr. Jacobs: Will you read the question, Mr. Blume?

(Question read by the reporter.)

Mr. Folonie: For the whole United States, from the beginning of time on.

The Referee: I take it, this question is preliminary to other questions.

Mr. Jacobs:

Q. Is that right?

A. I don't know. I did not make these figures so cannot speak. That is my company's statement, and I would say, knowing my company, that it were right; but I have no personal knowledge of it.

Q. But that is your company's statement in Missouri?

A. Yes.

Mr. Folonie:

Q. You have the same information on that you have about the other home office expenses, I suppose?

A. Yes.

Mr. Jacobs:

Q. And you have been testifying to them all morning haven't you?

Mr. Folonie: No, just part of it, Mr. Jacobs.

The Referee: Proceed.

Mr. Jacobs:

Q. And how much stock from the same source does it appear?

Mr. Folonie: Same objection, and reserve our constitutional rights; object to that question also.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 416] Mr. Jacobs:

Q. How much is the stock?
A. $2,805,000.
Q. Do you know how much of those cash dividends came from dividends in Missouri?
A. No, sir.

Mr. Folonie: If any. We insist counsel add "if any."
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Now, Mr. Bush, can you tell the court the amount of premiums paid for any definite year in the 5-year period to your company from the State of Missouri?
A. Actually paid into the company?
Q. Your written premiums.
A. Oh, written premiums?
Q. Well, make it paid premiums.
A. No, sir.
Q. You cannot?
A. No, sir.
Q. Can you tell from any report which your company makes to the State of Missouri each year what the amount of premiums in cash were paid from the State of Missouri in a given year?
A. No, sir.
Q. Why?
A. Because we don't keep it that way.
Q. Your books would not show how much cash in the way of premiums you got in a year from the State of Missouri?
A. Well, it would be very, very difficult to arrive at. I would not say positively that it could not be ascertained. It would be a very, very long, tedious job.

Mr. Hogsett: Mr. Jacobs, for my information—you are asking now about premiums paid and not premiums written, is that right?
[fol. 417] The Witness: Premiums paid, yes.

Mr. Jacobs:

Q. Before asking you this question—that question I asked you a moment ago concerning the cash dividends paid, as appearing in your annual statement for 1921, does not contemplate any stock dividends that might have been paid at all, does it?

A. I don't know.

Q. Well, it says "cash" in the report, doesn't it?

A. Yes, sir.

Q. And that would not contemplate stock dividends, would it?

A. I should say "not."

Q. Now, in your underwriting report for 1921 of the Aetna Insurance Company, is that figure $585,111 the amount of cash premiums for that year?

A. Those are the direct written premiums as distinguished from cash. They were not necessarily collected, and that is the distinction I understand you are making.

Q. That is the written premium?

A. Yes.

Q. And the cash premiums would be represented by what—that is, minus the return premiums?

A. No, if they could be ascertained, they would represent such premiums as had not been remitted for by the various agencies, I should say, although really I have never come in contact with that expression until I heard you use it here.

Q. Which one is that?

A. To the paid premiums.

Q. This figure that I read to you, from that figure could you estimate the cash premiums paid in a year in the State of Missouri?

A. No, sir.

[fol. 418] Q. You could not—from your books?

A. No, sir.

Q. Does your company in its annual report to the State of Missouri, set up a conflagration reserve?

A. I don't know.

Q. Well, you have examined——

A. I don't set them up, and I don't know whether they do or not.

Q. I am asking you whether in the annual report, filed

in the State of Missouri, there is set up a conflagration reserve?

A. I don't know.

Q. Haven't you looked?

A. No.

Q. Will you look?

A. Certainly.

Q. I am handing you your report for 1921, annual statement report. See if there is set up there a conflagration reserve?

A. I don't see any in there (examining document).

Q. It is not there, is it?

A. I don't say that, but I don't see it, bag, baggage and labeled.

Q. You can't find it, can you?

A. No, sir.

Q. But in your figures, did you figure a 3 per cent conflagration reserve?

A. No, sir.

Q. You don't think that should be considered at all, do you?

Mr. Hogsett: Object to that for the reason the law says it shall be, not 3 per cent, but that there shall be an allowance for the conflagration liability. Now, he questions this witness upon a question of law which the statute has settled. [fol. 419] The Referee: No, I understand the question to be whether or not, in fact, in his calculations he included that item.

Mr. Hogsett: He said "no."

(Question read by the reporter.)

The Referee: Well, he is being examined as an accountant. It may be admitted. Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

(Question again read by the reporter.)

A. Why, I should—that possibly it should be considered else the statute would not make mention of it, but I did not figure it in my figure.

Mr. Jacobs:

Q. Well, aside from the statement of the statutes, as an accountant, do you think if you didn't set it up in your report, that you maintain a conflagration reserve of so much money that it should be figured in this?

Mr. Folonie: I object to that about "aside from the statute" because he is not entitled to eliminate consideration of the law merely because he is an accountant, and we object on that ground, and for the further ground that it is now 5 o'clock.

The Referee: There is a great deal of force to your last objection, but let's have the question.

(Question read by the reporter.)

A. Probably say it should be.

Mr. Jacobs:

Q. Well, why didn't you?

[fol. 420] Mr. Hogsett: It is perfectly apparent that he is asking about one thing and the statute talks about another. He asks him why he did not figure conflagration reserve in what he has produced here.

The Referee: No.

Mr. Hogsett: Yes, that is it precisely. He says, "why haven't you figured conflagration hazard in what you have produced here?" And the obvious reason is, because he is producing figures to show profit and loss, and that has no relation whatever to figuring conflagration liability for the fixing of rates.

The Referee: The witness may give his reason, whatever it may have been——

Mr. Barker: We wanted to simply find out——

The Referee: Objection is overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Answer the question, if you know what it is.

A. Why I didn't figure it. Well, I figured without respect to it at all.

The Referee: The question is, "Why did you do so?"

A. Because I was arriving at the profit.

Mr. Jacobs:

Q. How is that?
A. Because I was arriving at the profit.

Mr. Folonie: Or loss.
The Witness: Or loss, in the state, for the years given.

[fol. 421] Mr. Jacobs:

Q. Is there upon your books an entry showing the setting aside of a conflagration reserve?
A. Not my books; no, sir.

The Referee: I think you may adjourn until 10 o'clock tomorrow morning.

(Whereupon, an adjournment was taken until the following morning at 10 o'clock, the same being Tuesday, June 19, 1923, at which time proceedings were resumed at the same place, and the following proceedings had:)

F. G. Bush, recalled to the stand for further examination, having been previously sworn, testified as follows:

Cross-examination continued by Mr. Jacobs:

The Referee: Proceed.

Mr. Jacobs:

Q. Mr. Bush, in testifying yesterday afternoon early, you spoke about the classification of marine insurance and inland marine insurance, and defined marine insurance, as I recall it, at that time. What did you say marine insurance is?

A. Well, I didn't attempt, I don't believe, to make a distinction that would perhaps technically be correct, but what I attempted to say was that it was more in the sense of something that was transitory—the coverage was transitory, in other words.

Q. Is marine insurance what the word implies, shipments of cargoes by sea?

A. Why, not according to my understanding of it. I was not attempting to do that, but what we class in our marine [fol. 422] business for state reports would be—inland transportation might be truck or tourist.

Q. Is that what you call inland marine?

A. Yes, sir.

Q. Does your company do strictly a marine insurance business, and by that, I mean insure the cargoes that are transported by sea?

A. It has conducted that sort of business, I understand, but retired from it, I think, a year or two ago.

Q. You did conduct it then within this period of five years under discussion?

A. Yes, sir.

Q. What percentage, if you know, of your business included, strictly speaking, marine business? Have you any idea?

A. No, sir.

Q. Inland marine is what?

A. I don't believe I understand your question.

Q. What is inland marine insurance?

A. The best explanation I could make of it is that the business as we term it would cover parcel post business, tourist business, or trip transit on trucks.

Q. What percentage of your business is done in insuring cargoes transported by truck?

A. Very small.

Q. Very small?

A. Yes, sir.

Q. Now, you mentioned yesterday also shipments of products by river transportation?

A. Yes, sir.

Q. What percentage in the State of Missouri—what percentage of your business is insurance on cargoes shipped by river transportation?

A. Very small.

Q. How about your insurance—when you said insurance on tourist, you meant on the personal property that tourists carry with them?

A. Yes, sir.

[fol. 423] Q. What per cent of your business was covered by that?

A. That is very small also.

Q. Now, inland marine really doesn't amount to a great deal in the State of Missouri, does it?

A. No, sir.

Q. Inland marine insurance, strictly speaking, however, during the period under inquiry, constituted a considerable portion of the Aetna Insurance Company's business, didn't it?

A. I haven't compared that because I don't handle that ocean marine business here, but there has been, I should say, considerable ocean marine business written—used to be.

Q. Now, from where was that business written?

A. I couldn't say that.

Q. Not in Chicago, however?

A. I don't believe so.

Q. And naturally not in Missouri?

A. I would say "not."

Mr. Folonie: May I make a suggestion for your assistance? That would not come through his office, and it might be conceivably written in Chicago or Missouri and he not know it, because it wouldn't go through his department.

Mr. Jacobs:

Q. Well, you wouldn't think there would be much ocean insurance written in Missouri, would you?

A. I would say not. However, speaking without having the knowledge.

Q. Now, Mr. Bush, the expense of conducting your ocean marine insurance or whatever you call it—is that what you call it? Ocean transportation, or what is it, you said?

[fol. 424] A. You were asking me the difference between the two. I called it ocean marine.

Q. The expense of carrying on your ocean marine business, that is included in the general expense which is allocated to various states of the union?

A. Yes, sir.

Q. And the expense of your ocean marine business was allocated to Missouri as well as other states?

A. Yes, sir.

Q. And is included in the figures which you have given here?

A. Yes, sir.

Q. You say, however, that this tourist business is small?

A. Yes, sir.

Q. Now, for the period of five years under discussion, you carried your automobile business under the classification of inland marine, or marine business, didn't you?

A. Yes, sir.

Q. And were you—where there appears a classification denominated marine, that includes all kind- of automobile insurance?

A. Yes, sir.

Q. And the loss ratio upon that kind of business, and the expense ratio, is affected by your business, is it, as a class, your figures here?

A. Yes, sir.

Q. You included all those classifications, along with all other non-regulated classes, in arriving at your figures that you have testified to here at this hearing?

A. Yes, sir.

Q. Both with reference to premiums, losses and expenses?

A. Yes, sir.

[fol. 425] Q. What else does marine insurance include besides ocean marine and river transportation, parcel post, auto tourist, and automobile insurance?

A. I believe that is all.

Q. That is the list, about?

A. Yes.

Mr. Hogsett: Will you read that question?

(Question read by the reporter.)

Mr. Hogsett: All right.

Mr. Jacobs:

Q. Now, you wrote, Mr. Bush, these reports from which you testified yesterday, I presume, at the request of counsel for the plaintiff in this case?

A. Yes, sir.

Q. And you say, I believe, that you prepared them from the reports on file in the office of the Superintendent of Insurance of Missouri?

A. I compiled them from my own reports—my own books.

Q. Now, let us understand this. Do you prepare the annual statement report for Missouri for the Aetna Insurance Company?

A. Yes, sir.

Q. Entirely?

A. Yes, sir.

Q. Do you prepare the annual tax report for Missouri for your company?

A. Yes, sir.

Q. And likewise your report of underwriting experience?

A. Yes, sir.

Q. Those are prepared by you?

A. Yes, sir.

Q. You likewise prepare these reports from which you testified?

A. Yes, sir.

Q. And am I correct in saying that you testified yesterday that you prepared these reports from which you testi- [fol. 426] fied from the reports which you filed in Missouri?

A. No, I wouldn't say that. The reports that were filed with Missouri were compiled from data I had in the office, and from that same data these reports were made.

Q. Did you compare the report which you have filed in Missouri with the report or statement which you prepared for the trial of this case?

A. Yes, sir.

Q. Did they correspond?

A. Yes, sir.

Q. Are you sure about that?

A. With a certain amount of reservation. I always put that in.

Q. Well, now, those reports which appear in Missouri were sworn to?

A. Yes, sir.

Q. By whom?

A. Well, the document would speak for itself——

Q. (Interrupting.) By the president of your company?

A. I believe so—secretary, probably.

Q. Secretary, probably the secretary attested it?

A. Yes.

Q. And you got them up?

A. Yes.

Q. They were accurate?

A. As near accurate as they could be.

Q. As near accurate as they could be?

A. Yes, sir.

Q. And they are accurate now?

A. Yes, sir. If they were accurate at the beginning, they are now.

Q. What do you mean by the statement "they were accurate then, as nearly as they could be gotten up?" What do you mean by that?

A. Well, at the time those reports are compiled, they are done in more or less of a limited time, and there is always [fol. 427] a likelihood or possibility of a small error creeping in now and again that is not influenced very materially in the final result. The general result, I would say, that they were as accurate as could be.

Q. You mean, it might average generally about the same throughout?

A. I mean, that as a general average of the figures submitted, that they are correct, and represent a true situation.

Q. Now, would you say figures touching on premiums or losses or expenses—would they coincide?

A. Yes, sir.

Q. You are quite sure of that?

A. Yes, sir.

Q. Did you separate your items more in your testimony than you did in your annual report and underwriting report—I mean, in this testimony here; or did you recite them as you turned them in in your report?

A. Do you mean by that, if they compared with that?

Q. I mean, did you separate them into items and enumerate them more strictly than you did in the report?

A. Yes, sir; I have them all itemized; yes, sir.

Q. Now, direct premiums, a report of direct premiums by all the companies doing business in Missouri without regard to reinsurance providing everybody is doing business with admitted companies only, as you said you were doing, yesterday—a report of direct premiums without regard to reinsurance would be an accurate reflection of the premiums collected in the state, or written in the state, wouldn't it?

A. Yes, sir.

[fol. 428] Q. Because after all, the report of reinsurance simply complicates the matter, and you reach the same ultimate result, providing you are doing business with admitted companies?

A. Yes, sir.

Q. Now, in your annual reports in Missouri, you were called upon to only report direct premiums minus return premiums, weren't you?

A. I believe they were called for in both ways. The annual statement calls for premiums less return premiums, less ceded reinsurance.

Mr. Leahy: The report speaks for itself, any way.

Q. I have specific reference to the underwriting report, since that is the report from which the question of rates is determined———

Mr. Folonie (interrupting): We object to that portion of the question that says, "that is what rates are determined from," because if so, it is not a statement of fact.

The Referee: That was a statement of counsel and not evidence.

Mr. Leahy: I move that it be stricken out.

The Referee: Sustained.

(To which action and ruling of the referee, the defendants by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Now, I am showing you, Mr. Bush, the underwriting report of your company for the year of 1921, and I show you first the back of that instrument—or the front of it—I don't know which it is, entitled "Underwriting Experience by classes for Missouri for 1921."

[fol. 429] Mr. Folonie: You can call that the front, and where it says "Expense and Losses," call that the back.

Mr. Jacobs: All right.

Q. Now, item 1 gives you what direction with reference to a report on premiums?

Mr. Folonie: This is the 1921 blank?

Mr. Jacobs: For 1921, yes.

A. This is the report of direct business.

Q. What else?

A. Gross direct business written, less only cancellations; gross direct premiums received; yes, sir.

Q. So it only refers to the return premiums, without regard to the question of reinsurance?

A. Yes, sir.

Q. Now, on your report here, what do you show? Will you look and see what you did show? I don't particularly care at this moment for the figures, but did you show merely your premiums minus your return premiums, or did you show reinsurance?

A. That is premiums less return premiums.

Q. Only, is that right?

A. Yes, sir.

Q. And the question of figuring on the basis of reinsurance does not appear here?

A. No, sir.

Q. Now, why did you, in making up your testimony, split the matter up into a question of reinsurance—ceding and assuming and reinsurance?

A. When we made up the reports, they were made on two different bases. This report is for direct business only. The report made up for our own tabulations includes reinsurance both ways.

[fol. 430] Q. Now, Mr. Bush, on your report, your underwriting report for 1920, you report your total premiums—and I am talking now about your underwriting report for 1920——

A. (Interrupting.) Yes, sir.

Mr. Folonie: This one was 1921.

Mr. Jacobs: I asked him something about '21 a moment ago.

The Referee: When you refer to the report of 1920, that means the report which relates to the business of 1920, although it is dated 1921?

Mr. Jacobs: This one here is the business of 1921. The underwriting experience, Aetna Insurance Company.

Mr. Folonie: For that year.

Mr. Jacobs: For that year.

Q. You report premiums minus return premiums of $707,153?

A. Yes, sir.

Q. Now, in your testimony in your tabulation of yesterday, you reported gross premiums direct of $810,790.99, and you have an item thereon of direct—return premiums direct, $91,594.68, which leases—you might figure it— $810,780, and return direct premiums of $91,594 which leaves $719,114, doesn't it?

A. Yes, sir.

Q. Now, why is there a difference in your testimony of yesterday, and your annual experience—underwriting experience report, of that sum of money?

A. $11,961.08.

Q. Something like that, I imagine?

A. Yes, sir. That is made up of four items of direct business that I add into my figures for taxation purposes, that do not pass through my books.

[fol. 431] Q. How is that?

A. I say that difference of $11,961 that you mention is made up of four items.

Q. I understand that. Of what?

A. Of marine business—direct marine business that does not pass through my books, which I add into my state report for taxation.

Q. Well, now, I am not quite clear. I understand your words all right but I don't know whether I am quite clear on what you mean. Now, you say that this amount of 11 odd thousand dollars is a sum of money which does not appear on your annual report, underwriting experience report, does it?

A. Yes, sir.

Q. It is in there?

A. No, sir, it is not.

Q. Well, I say it doesn't appear in there?

A. No, sir.

Q. And it does appear in your testimony of yesterday?

A. Yes, sir.

Q. And you say it is business which did not pass through your office?

A. Yes, sir.

Q. That is, the first of it, you said?

A. Yes, sir.

Q. And that it is marine business?

A. Three items of marine, and one of registered mail—marine business.

Q. And one of registered mail; and they are put in there for what purposes?

A. Purposes of paying the state taxes.

Q. For the purpose of paying the state taxes?

A. Yes, sir.

Q. Well, now, all of the—there are many things in the—in your annual reports, I mean, your underwriting reports [fol. 432] which do not pass through your office?

A. Yes, sir.

Q. But still you put them in the annual underwriting report, didn't you regularly?

A. Expense items; yes, sir.

Q. Well, yes, you put in expense items. Now, those were items which were transmitted to you from other officers, say, from the home office?

A. Yes.

Q. And you included those things in there at that time?

A. Yes, sir.

Q. Well, now why didn't you include this particular sum of $11,000 or $12,000?

A. Well, I have no classification of that to begin with. It was furnished me at the end of the year for taxation purposes, coming to me from my home office. Put in there for taxation purposes, as I say. I have no classification of it in those classification blanks, but——

Q. (Interrupting.) You say, that represents three items of marine and one of registered mail?

A. Yes.

Q. Did you have other things in there covering those items?

A. No, sir.

Q. Does that represent all the business that was done along that line?

A. Yes, sir.

Q. Eleven thousand dollars?

A. Yes, sir.

Q. All of the marine and registered mail business that the Aetna Insurance Company did?

A. No, that came to me from other sources than my own office. There is automobile business in there.

Q. In this $11,000?

A. No, sir.

[fol. 433] Q. Now, you don't write any marine here at all do you?

A. Yes, sir.

Q. How is that?

A. Yes, sir.

Q. Didn't you testify awhile ago you did not write practically any marine here or any marine at all, didn't you say?

A. I testified we wrote parcel post. No ocean marine.

Mr. Jacobs: Now, Mr. Hogsett helped you on that, but—you let the witness testify, and we'll get along better than that.

Mr. Hogsett: You were misquoting him.

Q. Now, you say part of that item was for parcel post?

A. No, sir.

Q. Registered mail?

A. Yes, sir.

Q. Now, I will show you your annual report and underwriting experience and ask you if there is not a specific registered mail item on there which has been answered?

Mr. Folonie: I will ask counsel to correct his question——

Q. (Interrupting.) Annual underwriting report, I say, for 1920, and I will ask you, Mr. Bush, if here is not your item of registered mail (indicating)?

A. Yes.

Q. And which carries a sum of money and an allocation to Missouri?

A. Yes, sir.

Q. Well, why was it that this item of $11,000 or $12,000 was not included partly, at least, under that item, or is it partly included in that item?

A. No part of that item.

[fol. 434] Q. Why not? And how do you know?

A. The registered mail business for that year was $875, coming from outside sources, which was not added into that figure.

Q. What do you mean by "outside sources"?

A. From our home office; that did not pass through my books.

Q. Did all this business pass through your books?

A. Yes.

Mr. Folonie: You mean what is mentioned in the statement?

Mr. Jacobs: Yes.

Q. When did you get this information about this outside business?

A. I got that shortly after the close of the year; possibly in January, February, or possibly March.

Q. Naturally, then, that business would appear in the following year's report?

A. No.

Q. How is that?

A. No. It is sent to me for the purpose of adding in the premiums of the year just closed.

Q. Well, why wouldn't it appear in the report for the following year, if you got it after the first of the year?

A. It doesn't enter the books—calculation of premiums—aside from the premiums for taxation purposes.

Q. In other words, here is a sum of money amounting to say, between $11,000 and $12,000 which is in the state of premiums reported to you from outside sources?

A. Yes, sir.

[fol. 435] Q. Now, when you make your underwriting report for 1920, there is nothing there which relates that there was this sum of money received by this office which is not covered or included anywheres?

A. It is not included in there; no, sir.

Q. That is what I say, in the underwriting report. You get it sometime after the first of the year, which would be early in 1921; that's true, isn't it?

A. Yes, sir.

Q. Now, at the end of 1921, you make another annual report?

A. Yes, sir.

Q. And that $11,000 or $12,000 does not appear there either, does it?

A. No, sir.

Q. And the first time that it has appeared is in the trial of this cause, as far as any reports made to Missouri are concerned?

A. No, sir.

Q. Did it appear in the reports there?

A. Yes, sir.

Q. In the underwriting report?

A. No, sir.

Q. Not in the underwriting report?

A. No, sir.

Mr. Leahy: In what report?

A. In the annual taxation report.

The Referee: Q. That sum represents premiums on business done previous to December 31, 1920?

A. Yes, sir.

The Referee: Q. But not reported to you until sometime in the early part of 1921?

A. After the books of the company at Hartford are closed for the year, we will say, 1920, that they send to us reports of premiums and losses which affect the states [fol. 436] under our jurisdiction—for the purpose of adding them in as business received from those states, and in this case, would come to us as an addition to the State of Missouri. They are reported in our annual report to the state, for the purpose of taxation.

Mr. Jacobs:

Q. Now, Mr. Bush, you, of course, know that your tax report is used only for the purpose of taxation, isn't it?

A. Yes.

Q. And is made for that purpose alone?

A. Yes, sir.

Q. Now, do you know whether any, say of this particular item of $11,000 or $12,000, represented cancelled business?

A. Pardon me?

Q. Do you know whether or not any or all of this $11,000 or $12,000 represented Missouri business?

A. Do I know that is Missouri business?

Q. Whether or not all of it, or any part of it, represented Missouri business?

A. I don't know personally; no, sir.

Q. Now, Mr. Bush, isn't it a fact that every dollar's worth of Missouri business, if there is a compliance with the law and with the requirements of this underwriting report, that every dollar of this Missouri business must be included in that?

Mr. Folonie: We object to that as calling for a legal conclusion, and in addition, because the underwriting experience by underwriting blanks do not call for all of it, but only for parts and parcels of it; and it does not purport to be a complete report of all premiums including unregulated classes.

[fol. 437] Mr. Leahy: They are furnished by the Superintendent of the Insurance Department to him.

Mr. Hogsett: And the evidence shows that they don't even agree between the five years of the 5-year period, but change and shift from year to year.

Mr. Jacobs: Now, just a moment, Your Honor, before you rule on that question: There is a requirement for registered mail here on this underwriting report, which I showed to the witness and which he said was that.

The Referee: Now, is there any dispute between counsel as to that?

Mr. Hogsett: No, sir.

Mr. Folonie: No, sir. I think counsel might state also there is no place in there for reporting marine: on the printed blank.

Mr. Jacobs: I don't think there is any marine blank.

Mr. Hogsett: Nothing calling for marine on that blank.

Mr. Jacobs: Excepting for automobile reports, which they say is part of the marine business, and this witness has said that here is a sum of money on marine which may or may not cover automobile business. Registered mail, which he specifically says is there.

Now, there is no way of separating it, particularly between automobile and other classifications of marine. Now, he says that he doesn't know whether this covers Missouri business or not, and I am asking him, in the light of that and in light of the requirements that all Missouri business [fol. 438] be reported, I am asking him this particular question.

The Referee: Now, recast your question.

Mr. Jacobs: Will you read it?

(Question read by the reporter.)

Mr. Jacobs: Well, leave out that part of the question with reference to compliance with the law.

The Referee: Yes.

Mr. Jacobs: Now, read the question that way.

Mr. Leahy: How will the question read, then?

The Referee: I suggest you reframe your question, then.

Mr. Jacobs: All right.

Mr. Jacobs:

Q. Mr. Bush, isn't it a fact that under the requirements of these underwriting reports which you say that you make to Missouri, that you should report all Missouri business?

Mr. Folonie: All the objections are made to this that were made to the question previously.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Well, we know that we should positively report everything for taxation purposes. Now, on that underwriting blank, there has been always more or less confusion with reference to our construction of just what to do with it. What we have attempted to do is furnish the information that the state required, and that would be a classification of the business that passed through our books. Now, reg-[fol. 439] istered mail business on that particular year, or $875, I probably will admit, perhaps, that it should have been put in there; I don't know, but it was not business that passed through my books, and therefore, was omitted.

Mr. Folonie: What about the marine part that you said you left out?

Mr. Jacobs:

Q. Well, now, Mr. Bush, I understand your explanation, but in the matter of an underwriting experience, isn't it necessary to arrive at an accurate result that all the business that is done for Missouri should be reported?

A. Yes, sir.

Q. And since you have reported this $12,000 item in your testimony, which may or may not be Missouri business but you now include it in your testimony concerning Missouri business, don't you think that should have been included or investigated to find out how much of it was Missouri business and included in your annual underwriting experience?

A. I say as to that, that there is a question in my mind now about the registered mail. However, the marine is not called for on there, and I wouldn't have included it were I to make the report today.

Q. Why not?

A. Because not called for.

Q. Well, automobile insurance is called for, isn't it? Is that in the underwriting experience?

A. Yes, sir.

Q. And haven't you testified marine includes, and for all those five years, your automobile business?

A. Yes.

[fol. 440] Q. Why wouldn't you have included it then to that extent?

A. That item calls for automobile business. It does not call for marine business.

Q. Are you hiding your automobile business under the classification of marine business?

A. No.

Q. You include the automobile business now?

A. In your marine totals; yes, sir.

Q. And you have a loss ratio of 110 per cent, and another of 130 per cent, on your automobile business, and you included that in your calculation showing the loss ratio for Missouri in this testimony, didn't you? Just answer the question, now: Did you or did you not?

The Referee: The witness will answer the question "yes" or "no," and then make any explanation he desires.

A. I will ask him to repeat the question.

Mr. Jacobs: Read him the question.

(Question read by the reporter.)

A. Yes, sir.

Q. All right. Now, go ahead.

A. I will say that the automobile business, while the automobile business is classed as marine business, marine business is not necessarily automobile. Now, that blank calls for automobile. That would necessarily not include the marine. However, the marine may include the automobile.

Q. Marine is bound to include all your five years of your automobile business?

A. Yes, sir.

Q. How much of this marine business that you speak about—that was $12,000 less 800 odd dollars, this particu- [fol. 441] lar year, for registered mail—say, in the neighborhood of $10,000 or $11,000 was marine?

A. Yes, sir.

Q. Now, what did that marine cover?

A. I wouldn't attempt to state.

Q. You don't know, do you?

A. No, sir.

Q. It may be automobile or may not?

A. I would say that it would not cover automobile, but I couldn't say positively, because it is handed to me as inland marine business.

Q. Haven't you testified inland marine covered all your automobile during this five years?

A. Yes, sir.

Q. On what theory, do you suggest to this court, that that item does not include any automobile insurance?

A. Because the automobile business covering in the state of Missouri is written through the western branch office.

Q. Invariably?

A. Always, so far as I know. We handle all automobile business through the western branch.

Q. Well, why isn't all this other business, then, handled through the western branch?

A. That I couldn't say except that it is not.

Q. And you don't know what it includes, do you?

A. No, sir.

Q. Now, if it was river transportation, it might be Missouri business, might it not?

A. Yes.

Q. If it was automobile tourist business, it might include Missouri business?

A. Yes.

[fol. 442] Q. If it was parcel post, likewise?

A. Yes.

Q. So you don't know how much of this is Missouri business?

A. No.

Q. And when you——

Mr. Folonie (interrupting): Read that question will you?

(Question read by the reporter.)

Mr. Jacobs:

Q. And when you leave that out of your annual underwriting experience, this $11,000 or $12,000, you don't say to this referee that you have made entirely an accurate report to the State of Missouri, have you?

A. I would say as accurate of the figures that pass through my books, yes.

Q. True, but then you are adding a lot of stuff that did not come through your books—you are adding a lot of expenses that did not come from your books, and charging them to the state of Missouri?

A. True.

Q. Now, you will please look on your annual underwriting experience, report, for 1921. Now, the premiums reported there are $585,111; that's right, isn't it?

A. Yes, sir.

Q. Now, then, in your testimony you report $707,863.84 minus your return premiums of $95,668?

A. Yes, sir.

Q. Leaving a balance of $612,195?

A. Yes, sir.

Q. As against a report which we received in Missouri of $585,111?

A. Yes, sir.

Q. Making a difference of how much?

A. $27,085.

[fol. 443] Q. Twenty-seven thousand dollars?

A. Yes, sir.

Q. Now, there is a sum of money which did not appear in the underwriting experience for 1921 in the state of Missouri from your company?

A. Yes, sir.

Q. Now, is it a fact that it did not appear for the reasons which you assign for the $11,000 or $12,000 of 1920?

A. Precisely the same.

Q. Same situation exactly?

A. Yes, sir.

Q. Not going into details with you, because no use rehashing that whole thing.

A. Yes.

Q. Now, Mr. Bush, does your company do a credit business?

A. Yes, sir.

Q. Do you ever have the experience of issuing a fire insurance policy and never receiving the premium until after the loss occurs?

A. Yes, sir.

Q. Frequently, the premium is not collected for as much, say, as sixty or ninety days or more?

A. Yes, sir.

Q. And sometimes you say loss occurs and then the premium is paid?

A. Yes.

Q. And you pay the loss?

A. Yes.

Q. Now, do you regard that, or do you not, as discriminatory against the person who pays cash for insurance?

A. I would think not. It is just a case of possibly a little delinquency, pressing at times—as we would all be pressed occasionally for something of that sort.

Q. Or is it the result of competition between agencies to get business?

A. I couldn't speak as to that. I should think not.

[fol. 444] Q. It is not strictly a competition between the companies because they all charge the same rate, don't they?

A. I believe so.

Q. They are in the fortunate position of being allowed, say, in Missouri, to act in concert to fix a rate?

A. I know nothing of that.

Mr. Folonie: We object to the characterization. If we get all these reductions, we will be far from fortunate.

Mr. Jacobs:

Q. You say that you know nothing about that particular situation?

A. No, sir.

Q. Of fixing rates?

A. No.

Q. Isn't it a fact that the credit policy which is of such a character as you say, that frequently losses transpire before ever the premium is paid, isn't it a fact that that is the result and has grown up on account of competition between agencies for business?

A. I couldn't say to that.

Q. You couldn't say?

A. No.

Q. And has there been education among the insurance people and your company concerning that particular matter in recent year or two?

A. Not to my knowledge.

Q. Isn't it a fact that there has been agitation along the line of requiring a policy holder who does not pay cash to give a bankable note, and by that, I mean a note with interest for a policy?

A. That happens on farm business, but not on the other class of business that I handle.

[fol. 445] Q. Has it been promulgated by the insurance department of the state of Virginia?

A. I don't know.

Q. And that has not yet occurred with reference to city business?

A. Not to my knowledge.

Q. And as I understand the situation, then, with reference to farm business, the farmer gives a bankable note—and when I say bankable note, I mean one that carries interest—for his policy?

A. Yes.

Q. But with reference to the city business, that does not transpire?

A. Not to my knowledge; no, sir.

Q. Now, I want to ask you about reinsurance to this extent: we discussed the question of duplicate overhead expense yesterday in doing the insurance.

A. Yes.

Q. Now, reinsurance operates, doesn't it, Mr. Bush, for the benefit, say, of the extremely large property holder?

A. Well, possibly so, although I wouldn't think that I was qualified to speak on that.

Q. By that, I mean that if a man or a company owning this building, the Insurance building of Chicago, that is worth a tremendous sum of money—that for fire insurance purposes, reinsurance would benefit them to the extent that they would only have to take out one or two policies, and it would be reinsured, and only part of it retained by the original company

A. That would be——

Q. (Interrupting.) It would operate as a convenience to him or to that company?

A. Yes.

[fol. 446] Q. Would it operate in any way so to reduce the rate of the large insurer?

A. Not to my knowledge.

Q. The average property holder, the ordinary insurer, there is no particular advantage whatever in reinsurance to him?

A. Well, I wouldn't care to—I don't think that I was qualified to speak on that.

Q. Well, do you think on that——

Mr. Hogsett (interrupting): He says he is not qualified to speak on that.

(Whereupon, discussion ensues which is not made a part of the record.)

The Referee: Confine yourself, gentlemen, to the usual course of cross examination, and defer argument to a more convenient season.

Mr. Jacobs:

Q. Mr. Bush, the small property holder, the home owner and the small farm owner, or average person has no need for reinsurance, has he?

A. Not as a rule, I wouldn't think.

Q. Any company can take and retain his policy or business?

A. Yes.

Q. It is the great insurer, as we spoke of him awhile ago, who benefits in the matter of convenience by reinsurance?

A. Possibly.

Q. What is the insurance field?

A. Publication, you mean? I don't know.

Q. Don't you know anything about it? Do you read it?

A. Occasionally.

Q. Is it maintained by the advertising of insurance companies?

A. I don't know.

Q. Don't know anything about it?

A. Not a thing.

[fol. 447] Q. Where is it published?

A. I don't know.

Q. Who publishes it?

A. I don't know.

Q. I will admit now that you don't know anything about the insurance field. Are you in a position now to give to the referee, Mr. Bush, the loss percentage on non-regulated insurance in Missouri and the loss percentage on regulated insurance in the state?

A. Not separated.

Q. Not separate.

A. No, sir.

Q. Excepting that you did examine into the automobile loss ratio?

A. Yes, sir.

Q. Yesterday?

A. Yes.

Q. And you can't give the other at this time, and separate them?

A. No, sir.

Q. I want to know them separately?

A. I haven't that.

Q. You haven't made that calculation?

A. No.

Q. Do you happen to know, or have you investigated what the excess agency commissions amount to each year, and I mean those commissions which are paid in the city of St. Louis over and above the regular commissions paid out in the state generally?

Mr. Folonie: May I suggest that the term "excess" is confused by the witness, as it would be used by the witness, I think.

Mr. Jacobs: Well, I mean by it, the 10 per cent to which you testified yesterday, exclusive of the contingent commissions which are paid and range perhaps all the way from 1 to 5 per cent.

[fol. 448] A. I haven't any idea as to calculation at all. That is, in dollars and cents.

Q. That is, in dollars and cents?

A. No.

Q. Well, could you figure that upon the basis of the total business of the state, and the fact that about one-third of it is done in the City of St. Louis.

Mr. Folonie: We object to assuming that as a fact.

The Referee: For the purpose of the question, an assumption may be made. If it is not accurate, it may be shown. Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I don't believe I could.

Mr. Jacobs:

Q. Do you know the total premiums?

A. For Missouri?

Q. Yes.

A. As they are reported here yesterday.

Q. I am talking about them as you report them in your underwriting experience.

A. Yes, sir.

Q. And could you tell then, say, for 1921, what the preminums would be for the State of Missouri, or can you tell what they were for 1921?

A. Not from these figures; no, sir.

Q. Can you tell from the volume of business done, as you reported it in your underwriting experience, 1921, approximately what the premiums would be for the state for that year?

A. No, sir.

[fol. 449] Q. Can't find that out?

A. I can—I could tell you what the commissions were that year on that basis, but as we reported it here——

Q. (Interrupting.) I want it as it is in the underwriting report.

A. In total?

Q. What have you got there in that testimony for 1921—exhibit—the commissions?

A. $134,259.78.

Q. For your company alone?

A. Yes, sir.

Q. One hundred thirty-four thousand dollars?

A. Yes, sir.

Q. Now, you don't know what part of that was paid in St. Louis, do you?

A. No, sir.

Q. And you couldn't take a third of that and show the St. Louis payments, could you?

A. I could approximate it to one-third.

Q. That would not reflect a true condition though, would it?

A. No.

Q. Because there is the proportion paid in premiums in St. Louis, would be greater than one-third if one-third of the business is done there.

A. Yes, sir.

Q. On account of that increased commissions?

A. Possibly; yes, sir.

The Referee: Do I understand that your records will show the total volume of business done in the state of Missouri in a given year, and would not show the total volume of business done in the City of St. Louis for that year?

A. No, sir. The City of St. Louis is divided as it is divided by agencies, and the commissions are ascertainable [fol. 450] by agencies. It is so subdivided, but I haven't those calculations with me.

The Referee: Q. You could, then, ascertain the total amount paid to agents in the state of Missouri outside of St. Louis?

A. Yes.

The Referee: Q. And then know what would be the sum or amount paid to agents within the city of St. Louis?

A. Yes, sir.

Mr. Jacobs:

Q. Now, Mr. Bush, you testified yesterday in making your calculation of profit and loss, that you did not take into consideration any investment or banking earnings?

A. Yes, sir.

Q. And that included not earnings or interest on unearned premium reserve?

A. Yes, sir.

Q. Now, is it not a fact that the policy of the companies has been in the past to secure volume of business?

A. We are striving for that—volume.

Q. Now, in securing volume of business, the companies rely upon the rate bureaus to take care of the rates, don't they? That is, they do take care of the rates, don't they?

A. That is my understanding, but I don't state from a personal knowledge.

Q. The question of volume of business is more important to the company than the question of loss and expense ratio, isn't it?

A. I would not think so.

Q. Why?

A. I would say that if you are writing the volume of business that is unprofitable, you would perhaps prefer not to have it than to have it.

Q. Now, you haven't—can you testify to any precautions taken by the company with reference to the writing of the business?

A. No.

[fol. 451] Q. The fact of the matter is that a loss and expense is taken care of by the rating bureau in fixing the rate isn't it?

A. I don't know.

Q. The volume of business, as you say, is what is sought by all the companies?

A. Yes. I should say volume of business is what we all are after, trying to increase our business, but keeping it reasonably free and clean of hazardous risks, etc.

Q. Now, volume of business means increase of unearned premium reserve, doesn't it?

A. Generally speaking, yes.

Q. Unearned premium reserve is regarded as the company's property, isn't it?

Mr. Folonie: Object to that on the ground it is not an asset at all. Unearned premium reserve is a liability, if the court please.

The Referee: Well, the question in substance asked whether or not as far as the knowledge of this witness goes, such a reserve is regarded as the property of the company, in that case regarded by him or generally the insurance world, I suppose. He may answer.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I should say that the reserve was set up for the purpose of anticipating the possibility of repaying it. That is what I would say it is there for.

Mr. Jacobs:

Q. Yes, I understand. Now, from the standpoint of earnings, it is regarded as the company's property, isn't it?

A. would say not.

[fol. 452] Q. Well, why don't you give us credit, then, in making these figures for the earnings upon the unearned premium reserve from the State of Missouri?

A. I don't know personally that it earns.

Q. Well, haven't you looked?

A. I have no means of knowing that.

Q. Haven't you made reports to the State of Missouri showing investment earnings and interest earnings?

A. I have made such a report on that blank, because it was called for, but for no other purpose.

Q. Well, it was accurate, wasn't it?

A. I don't know anything about the accuracy of it.

Q. And you made the report to the State of Missouri on the question of earnings, and did this because the blank called for it, sworn to by your company, and you say you know nothing about its accuracy. All right, Mr. Bush. Who is Best; do you know him?

A. No, sir.
Q. Do you know of him?
A. No, sir.
Q. You don't know of Best—Best's insurance report?
A. I know of him in that connection, with that report.
Q. What is he? Is he an authority?

Mr. Folonie: We object to assuming there is such a thing as an authority that would be binding upon this court.

Mr. Jacobs: Well, I am asking this witness.

Mr. Folonie: We object to it as calling for a conclusion. [fol. 453] The Referee: I suppose you can ask him whether or not he is regarded in the insurance world as an authority on insurance business, and whether or not this witness knows that fact, if it be a fact.

A. I don't know.

Mr. Jacobs:

Q. You don't know that fact?
A. No, sir.
Q. There is not a fire insurance company that you have ever been in in your life that has not got this book, is there? Did you ever see a fire insurance company in your life that did not have that book in it?
A. I never went to investigate.
Q. Have you got one in your office?
A. Yes, sir.
Q. You bet you have.

Mr. Folonie: We object to commenting on the witness's testimony.

The Referee: Sustained.

Mr. Jacobs:

Q. Have you read it?
A. Not from cover to cover.
Q. Have you read that part of it which relates to the Aetna Company?
A. No, sir.
Q. No, sir?
A. No, sir.
Q. Did you read its report on other companies?

A. No, sir.

Q. You haven't read it at all?

A. No, sir.

Q. Haven't you looked inside of it even?

A. Yes, sir.

[fol. 454] Q. Just opened it up and looked inside and shut it up?

A. I used it for a purpose.

Q. What purpose?

A. For ascertaining the position of companies in states; that is, whether or not they are admitted, etc., but that is all.

Q. Is that accurate in the things reported—is this book accurate in its report for which you use it?

A. I don't know.

Q. Don't know. You don't say that you use a book on matters of importance connected with your business, the accuracy of which you doubt, do you?

A. I will say I found it reasonably accurate, although I have found at times an omission in there.

Q. Haven't you read any of this article on the Aetna Insurance Company?

A. No, sir.

Q. You say this book is published in New York, is it? Has an office in Chicago?

A. Yes, sir.

Q. Relates to all kinds of insurance matters—sort of an insurance manual, isn't it?

A. That is what I understand it to be; yes, sir.

Q. And it is generally so regarded by the insurance companies?

A. Yes.

Q. Would you say or be willing to accept its statements with reference to the stock dividends declared by your company?

Mr. Folonie: We object to whether he would or not as not any proper method of proof—if that subject were proper for proof at all.

[fol. 455] The Referee: I take it the question does not go as to the accuracy of the report on the matter suggested by the question, but simply in an effort to ascertain the degree of credit and faith of the witness in this particular

publication. With that understanding, the witness may answer the question.

Mr. Leahy: What is the competency of proving the accuracy of this publication? The books of the company are available.

The Referee: I suppose the investigation along this line is being conducted for the purpose, if it can be shown by this witness and if the witness knows, whether or not this particular publication is regarded as an authority in the insurance world.

Mr. Leahy: He has testified he didn't know about that.

The Referee: And he has testified in substance that he doesn't know. This question asks or directs his attention to a particular point, whether or not he would regard the books as of reliable weight on that particular point.

Mr. Jacobs: He says he used it and found it sometimes accurate, and sometimes not accurate.

The Referee: He may answer.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I know nothing about the figures that were furnished for that report. I don't know where they came from, nor by whom they are furnished.

[fol. 456] Mr. Jacobs:

Q. With reference to the unearned premium reserve, as a practical matter speaking as an insurance man, a company could dispose of its insurance and always receive a profit or realize a profit out of its unearned premium reserved, couldn't it?

A. I would think not, but that would be a mere conjecture because I don't know. That would be pretty hard to determine, but I should think not.

Q. Isn't it generally agreed among insurance men that there is an unearned premium reserve and profit, ranging in the neighborhood of from 40 to 45 per cent?

A. I don't know anything about that.

Q. Do you think that an unearned premium reserve really is ever required to meet the conditions for which it is created and kept, in its entirety?

A. I would think that it was set up as near accurately as possible, to take care of all the contingencies.

Q. Well, you keep an unearned premium reserve—doesn't that represent all the premiums which you receive, say, in the State of Missouri save the earned premium?

A. Yes, sir.

Q. And all you have got it, therefore, is what?

A. For purposes of ascertaining what the earned premium might be at the particular point.

Q. No, you misunderstand my question. What do you keep the unearned premium reserve for?

A. For the purpose of repaying to the assured where the policies are cancelled, or to possibly reinsurance with some other company if the business were turned over.

[fol. 457] Q. Or where there is reinsurance?

A. Yes, sir.

Q. Now, that is not a contingency because you have control over that, haven't you?

A. Over reinsurance, yes.

Q. The only possible contingency is the case of cancellation?

A. Yes.

Q. And your unearned premium reserve is all the premiums you received save the earned premium?

A. Yes, sir.

Q. Now, you can't point to a single instance within your insurance knowledge where the unearned premium reserve was ever required in its entirety to pay back cancellations?

A. I know of no such case.

Q. You know of no such case?

A. No, sir.

Q. Can you point to a single instance in all your insurance experience where the unearned premium reserve was required to be paid back to the extent of 50 per cent of it?

A. I couldn't answer. No, sir.

Q. But you say you have never heard the fact, that it is generally understood that there is a profit in the unearned premiums over and above the contingency?

A. I don't know about that.

Q. You don't know about that?

A. No, sir.

Q. Now, I am going to ask you about some matters of

profit. You testified yesterday to certain losses for the State of Missouri. Of course, you arrived at those figures without regarding anything except strictly what you term underwriting experience?

A. Yes, sir.

Q. And by the use of earned premiums and incurred losses?

A. Yes, sir.

[fol. 458] Q. You did use paid expenses yesterday?

A. Yes, sir.

Q. Now, in your reports, your underwriting experience report, I will ask you if these figures are correct: For the year of 1917—this is for the State of Missouri—your underwriting report shows premiums, $374,608.00?

Mr. Folonie: What year is this, please?

Mr. Jacobs: 1917. I am talking about paid premiums, because we differ on our methods of calculation; collected premiums. $374,608; is that correct?

A. I don't understand that under the term you use, "collected premiums." Those are the premiums written.

Mr. Jacobs:

Q. Premiums written?

A. Yes, sir.

Q. Now, their earnings as you report them, whether they are accurate or inaccurate, for 1917, in the State of Missouri, $26,476? Is that correct?

A. I haven't that figure. I don't know what that is.

Q. Well, that would be all other earnings—interest earnings or anything else that appear in the underwriting experience.

A. Is that that interest on unearned business——

Q. (Interrupting.) Yes. Any other earnings you may have.

A. I will accept those figures.

Q. All right. Now, your paid losses, $223,738?

A. Yes, sir.

Mr. Folonie: I want the record to show the witness does not have the paper before him. He is accepting counsel's statements.

[fol. 459] Mr. Jacobs: I don't want him to accept my statement about it. I want him to have the paper before him, because I want this answer accurate.

The Referee: Get the paper before you, Mr. Witness, so there will be no question about it.

The Witness: I don't believe that I have this underwriting experience by classes here, but those figures there will speak for themselves. I will take that.

Mr. Jacobs:

Q. Here is 1917, the underwriting experience for the Aetna Company for 1917. You can look on that and see if the premium figures are correct. I gave you $374,608?

A. Yes.

Q. And $26,476—that was "other earnings."

A. $26,476?

Q. Yes.

A. $26,463.

Q. $26,463?

A. Yes, that is what is here.

Q. Well, that is close enough.

A. Yes.

Q. Losses, $223,738?

A. Yes, sir.

Q. Expenses?

A. $140,375.

Mr. Folonie: Take the blank and look at it, if you want to.

The Witness: Well, he is testifying as to that expense, and what I handed in here yesterday is $130,000; materially reduced.

Mr. Jacobs:

Q. Look on your annual underwriting report and tell me what the experience is.

A. Yes, that is right, $140,000.

Q. It is the figure I gave you, isn't it?

A. Yes.

Q. Now, take 1918—in other words, the expense you reported for 1917 for the underwriting experience of the [fol. 460] State of Missouri, was about $10,000 more than you testified to yesterday?

A. Yes sir.

Q. Now, 1918 premiums——

Mr. Folonie (interrupting): Is that the 1918 underwriting blank you are handing him, Mr. Jacobs?

Mr. Jacobs: Yes. Report for the State of Missouri.

Q. $431,944?

A. (Witness examining document.) Yes, sir.

Q. That is correct, eh?

A. Yes, sir.

Q. And "Other earnings," $26,260?

A. Yes, sir (examining document).

Q. Is that correct?

A. Yes, sir.

Q. Losses, $258,095?

A. Yes, sir.

Q. Expenses, $163,823?

A. Yes, sir (examining document).

Q. Does that agree with your testimony of yesterday?

A. No, sir.

Q. How much did you give expenses yesterday?

A. $160,000.

Q. Now, 1919. Where is 1919?

The Referee: You said "160," you mean $160,000?

A. Yes, sir.

The Referee: A difference of about how much?

A. $3,000.

Mr. Jacobs:

Q. I am handing you underwriting report for 1919 of your company for the State of Missouri: Premiums, $536,765?

A. Yes, sir.

[fol. 461] Q. Other earnings, $31,709?

A. Yes, sir.

Q. Losses, $177,967?

A. Yes, sir.

Q. Expense, $216,986?

A. Yes, sir.

Q. Does that agree with your testimony of yesterday?

A. No, sir.

Q. How much is the difference?

A. $192,765.

The Referee: You mean the difference is that amount?

Mr. Jacobs: No, the amount of expenses you testified to yesterday?

A. $192,765.

Mr. Leahy: What is the difference? He asked you that.

A. I thought he asked me what I testified to.

The Referee: State what the difference is.

A. That would be about $24,000.

Mr. Folonie: Which way?

A. Less, in my report yesterday, than on this under writing report.

Mr. Jacobs:

Q. From which I am figuring?

A. Yes.

Q. 1920 now. "Premiums, $707,153?"

A. Yes, sir.

Q. Other earnings, $34,046?

A. Yes, sir.

Q. Losses, $361,760?

A. Yes, sir.

Q. Expenses, $287,303?

A. Yes, sir.

Q. 1921——

Mr. Folonie (interrupting): You forgot to ask him about the difference?

[fol. 462] Mr. Jacobs:

Q. Well, how did it compare, 1920?

A. That was $268,000.

Q. You had $268,000 or something like $15,000 less than you reported to Missouri on this report?

A. Yes, sir.

Q. Now, 1921 $585,111?

A. Yes, sir.

Q. Other earnings—that first figure was for premiums, Mr. Reporter. Other earnings, $36,184; is that correct?

A. Yes, sir.

Q. Losses, $429,919?

A. Yes, sir.

Q. Expenses, $285,727?

A. Yes, sir.

Q. What were your figures on expenses yesterday?
A. $242,032.
Q. All right. Now, these figures total—I will get you to look at them here, premiums for the five years, $2,635,581?
A. Yes.
Q. And other earnings $154,645?
A. Yes.
Q. Losses, $1,451,479? Expenses, $1,094,214. Is that correct—that is expenses, as they appear on your report?
—. Yes.

Mr. Folonie: You mean, are the calculations correct, I assume?
Mr. Jacobs: Yes.

Mr. Jacobs:

Q. Now, the premiums of $2,635,581, and the interest earnings of $154,645, total $2,790,286.

Mr. Folonie: We object to adding all these together. It is like adding cats and dogs together, and wondering what you get as a total, because every blank is on a different basis; some the gross net, and some net basis, and—absolute [fol. 463] net basis, and some on authorized net basis. We have three different kinds of blanks, and to add those together can produce nothing but confusion. Those underwriting blanks are on three different bases and they cannot be added together and get any result that proves anything.

The Referee: The objection goes to the weight rather than the competency, it seems to me.

Mr. Folonie: It seems to me it has no weight at all and, therefore, incompetent because it has no weight.

The Referee: That is a question that the referee is unable to determine at this time. Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: What is the question?

(Question read by the reporter.)

A. Yes, sir.

Q. Now, your losses—there appears on this paper, losses of $1,451,479, and expenses of $1,094,214, which added together gives losses and expenses of $2,545,693; doesn't it?

A. Yes, sir.

Mr. Folonie: We object on the same ground, adding figures together which, when the total is reached, are conclusive of nothing.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

[fol. 464] Mr. Jacobs:

Now, deduct that amount from the amount of premiums and other earnings, and does that leave the sum of $244,533?

Mr. Folonie: We object to whether it does or not on the ground it would not be probative of any fact.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes.

Mr. Jacobs:

Q. And that is a sum of money in the amount of $244,533, which is in excess of the combined loss and expense for that five years, as these figures appear?

A. Yes, sir.

Q. Now, you testified——

Mr. Leahy (interrupting): Appear on the reports?

Mr. Jacobs: Appears on the annual underwriting experience reports of the Aetna Company to the state of Missouri?

A. Yes, sir.

Q. Now, Mr. Bush, you testified yesterday that the total capital stock—outstanding capital stock of your company was 5 million dollars, didn't you?

A. Yes, sir.

Q. And that an allocation of that to Missouri based upon volume of business in Missouri compared to the volume of business over the United States generally, amounted to about 3 per cent or $150,000?

A. Yes, sir.

Q. Now, I will ask you to take either this $244,533 which covers the 5-year period with an allocation of stock to this date, to Missouri, of $750,000, or else take your $150,000 [fol. 465] if you wish to do it that way, and divide this total profit of the five years by 5, and tell the referee if it is not a fact that that is a percentage of profit of 32.6 per cent on the capital stock allocated to Missouri.

Mr. Folonie: We make the same objection which we made in detail yesterday raising the constitutional question. It is not necessary to repeat the objection at this time.

The Referee: Not necessary. I understand your objection. Objection overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I would have no hesitancy in saying that the figures to which he has just referred produce the result.

Q. Of 32.6 per cent as an apparent percentage of profit?

A. Yes, sir.

Q. Now, Mr. Bush, in each instance in making these figures, I counted against the state—because they appeared in your underwriting experience as you reported it to Missouri—more expense than you now testified to, didn't I?

A. Yes, sir.

Q. In other words, for 1917, about $10,000 more than I need to have counted in expenses?

A. Yes, sir.

Q. And in 1918, $3,000 more?

A. Yes, sir.

Q. In 1919, how much?

A. $24,000.

Q. $24,000 more than I need to have considered against us?

A. Yes, sir.

[fol. 466] Mr. Folonie: We object to the form of the question, "that I need to consider."

Mr. Jacobs: Well, I am taking his figures as he testifies to them.

The Referee: I think the witness understands the question.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. In 1920, about $15,000 more?

A. A little more than that, isn't it?

Q. Well, in the neighborhood of $15,000?

A. Yes.

Q. And in 1921, about $45,000 more?

A. Yes, sir.

Q. All those expenses for all those years I figured in these figures which you have just computed?

A. Yes, sir.

Q. As they appeared in your annual underwriting report?

A. Yes, sir.

Q. And those expense statements were true to the extent that I have just stated out of the testimony which you now give?

A. Yes, sir.

Q. And showing the original—using the original figures there shows on this method of figuring, a profit of 32.6 per cent?

The Referee: Covering what period?

Mr. Jacobs: For five years, 1917 to 1921, inclusive.

A. Yes, sir.

[fol. 467] Mr. Leahy: You say this method of figuring, Mr. Jacobs. You mean your method of figuring?

Mr. Jacobs: I mean the method we used considering the earnings and written premiums and paid losses and paid expenses.

Mr. Folonie: As shown on underwriting experience blank.

Mr. Jacobs:

Q. Now, I want to ask you a little about your company's profits generally in the United States during this period. These figures which I am giving you, I take from the annual statement report made by your company to the state of Missouri. If they are accurate, all right. If they are not accurate, why call my attention to it.

Mr. Folonie: I can check you on your figures here.

Mr. Jacobs:

Q. 1917. I am now asking you relativ[illegible]r business over the United States generally, Mr. [illegible] you say you can check your figures, Mr. Fo[illegible]nie?

Mr. Folonie: I thought I could, but I guess I have something different than I thought I had.

Mr. Jacobs:

Q. 1917, interest and rents, $1,059,303. Is that correct?
A. $7330.
Q. $7330. Profits on investments, $13,812?
A. Yes, sir.
Q. Losses on investments, $782,970?
A. Yes, sir.
[fol. 468] Q. Investment expenses, $49,595?
A. Yes, sir.
Q. Now, does that, computing it if you will, give a net profit on investment of $240,578 for 1917?

Mr. Folonie: We object on the same ground we made yesterday respecting the constitutional objections which I then stated in detail.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Is that correct?
A. Yes, sir.

Q. All right. Now, 1918; interest and rents, $1,176,074?
A. Yes, sir.
Q. Profits on investments, $45,858?
A. Yes, sir.
Q. Losses on investments, $473,247?
A. Yes, sir.
Q. Investment expenses, $44,255?
A. Yes, sir.

Mr. Folonie: Same objection to that.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Net profit on investment, $704,430?
A. Yes, sir.
Q. Now, these figures appear in the annual statement reports of your company to Missouri?
A. Yes, sir.
[fol. 469] Q. Now, 1919. 1919, interest and rents, $1,359,880?
A. Yes, sir.
Q. Profits on investments, $92,907?

Mr. Folonie: Same objection to that.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Is that correct?
A. Yes, sir.
Q. Loss on investments, $373,000?
A. Yes, sir.
Q. Investment expenses, $49,344?
A. Yes, sir.
Q. Those are the figures which appear in your annual statement reports of the Aetna Company for the State of Missouri, 1919?

A. Yes, sir.
Q. And show a net profit on investments of $1,030,354?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Now, 1920. Interest and rents, $1,568,210?
A. Yes, sir.

Mr. Folonie: Same objection to that.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 470] Mr. Jacobs:

Q. That is correct, Mr. Bush?
A. Yes, sir.
Q. Profit on investments, $1,269?
A. $1,269.

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Loss on investments, $727,658?
A. Yes.
Q. Investment expense, $69,660?
A. Yes, sir.
Q. Those figures appear in your annual statement report of the Aetna Company to the State of Missouri for the year 1920?
A. Yes, sir.

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. And do they give a net profit on investment of $772,-162?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Q. 1921. I hand you your annual statement report for the Aetna Company for 1921 made to Missouri, and does it show "Interest and Rents, $1,677,296"?

[fol. 471] Mr. Folonie: Same objection.

A. Yes, sir.

The Referee: I understand the question simply asked what the report shows, and the objection being made on constitutional grounds as stated yesterday?
Mr. Folonie: Yes.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Folonie: That the fact sought to be adduced here, is improper on the constitutional ground.
The Referee: The question so far simply relates to the contents of the report.
Mr. Folonie: It purports to introduce figures in the nature of admission against interest, and that is the reason I am making this objection now on the constitutional ground: That if they have any effect in the nature of an admission of the defendant by having filed the reports, I

wish my constitutional objections to appear as proof of that fact.

The Referee: It may be understood objection is made and overruled as to this entire line of proof, and exceptions saved, without being formally noted.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Does your report also show profits on investment, $35,686?

A. Yes, sir.

[fol. 472] Q. Losses on investments, $421,297; and investment expense, $60,253?

A. Yes, sir.

Q. Now, Mr. Bush, does that show a net profit on investment of $1,251,432 for 1921?

A. Yes, sir.

(See page 11, annual report.)

Q. Now, I want to ask you about your dividends paid, according to your annual statements in Missouri for the period under inquiry. Now, for 1921, I will ask you whether or not your annual statement report of the Aetna Company to the state of Missouri shows dividends paid of $1,200,000?

A. Yes, sir.

Q. Look at page 3 of the 1920 report. On 1920, in your annual statement report to the state of Missouri of the Aetna Company, does it show the dividends of $1,200,000 were paid that year?

A. Yes, sir.

Mr. Folonie: Same objection which we have already noted yesterday and on the constitutional ground, is noted now as an objection now to every question relating to dividends.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. 1919; does your annual statement report to the state of Missouri show dividends paid of $1,200,000?

A. Yes, sir.

Q. 1918; now; page 3; does your annual statement report show dividends paid for 1918 of $1,000,000?

A. Yes, sir.

[fol. 473] Q. In 1917, does the annual statement report to Missouri of the Aetna Company show dividends paid of $1,000,000?

A. Yes, sir.

Q. Now, Mr. Bush, for that 5 year period of 1917 to 1921, inclusive, do your aggregate dividends paid amount to $5,650,000?

A. Yes, sir.

Mr. Folonie: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. And your total capitalization is $5,000,000?

A. Yes, sir.

Mr. Jacobs: I haven't anything more to ask of Mr. Bush at this time, excepting that I would like if you will, to have him bring in his books from which he made at least his underwriting reports for 1920 and 1921. I want to inquire from Mr. Bush just how he wrote up the reports—the underwriting reports for those years for Missouri.

Mr. Folonie:

Q. How many records will that comprise, Mr. Bush?

A. It will comprise a great many. I would like to discuss it with him because possibly I could shorten it some.

Mr. Folonie: Mr. Jacobs, the witness says that by inquiries to you, he may probably save himself the work of bringing unnecessary records, and I suggest you permit him to ask you a few questions.

[fol. 474] Mr. Jacobs: Well, if I can answer them.

Mr. Folonie (continuing): As to the scope of what you require.

Mr. Jacobs: What is it, Mr. Bush?

The Witness: Well, I thought possibly I could run over at leisure time with you just what you had in mind and could perhaps shorten then my method of giving you what you require. Of course, the records running throughout the year would be voluminous, take lots of time to get them, and to go through them, but if it is certain proof you wish, I could probably shorten the matter very materially.

Mr. Jacobs: I don't know how you could except my working with you, because what I want to develop is just exactly your method of preparing your report from your books.

The Witness: Well, that of course, would require all the cards of the tabulating department.

The Referee: Would this suggestion meet with the approval of counsel, that Mr. Jacobs, with Mr. Bush's assistance, might go to the office and there make a tentative, cursory examination of what appears there and then indicate what particular documents or books are desired to be brought here—might shorten it that way. I take it, both sides wish to lessen the report as much as possible.

Mr. Folonie: And if they are as voluminous as to be impracticable to bring them here, we might even adjourn the hearing to that office.

The Referee: Surely.

[fol. 475] Mr. Folonie: It is right in this building.

The Witness: It would require you to have all the tabulated cards for the year.

Mr. Jacobs: We probably can go in there and go over them with Mr. Bush somewhat anyway.

The Witness: I think there would be no difficulty in satisfying you of anything, if you just get down to hard tacks and run over what we have and shorten the method.

The Referee: Yes.

Mr. Jacobs: Now, one more question that General Barker has suggested to me.

Mr. Jacobs:

Q. Do you know the extent of insurance which is written in Missouri by your company but not through your office here?

A. Only such as the small amount I have testified to—those differences in the underwriting figures. I believe it was $11,000 one year.

Q. Yes, something like $11,000 one year, and $24,000 one year?

A. Yes.

Q. Do you know whether or not there is a large business done by your company in the State of Missouri which is written, say, through the New York office?

A. That I should say embodied everything from all sources outside of this office that has accumulated at our home office and sent to us here, and that would embody New York office, or possibly Philadelphia office, or any other office that there might be.

The Referee:

Q. What do you mean by that, those amounts of $11,000 and $24,000, etc.?

A. Yes.

[fol. 476] Mr. Jacobs:

Q. For those two years?

A. Yes.

Q. Now, do you know how the home office, or some other office outside of Chicago happens to write this business which reflected itself in these amounts you speak of?

A. I do not.

Q. That might write business other than that, might they not?

A. Yes.

Q. And you have no way of knowing at this moment about that?

A. No, sir.

Q. An if they did, it would not appear in the Missouri business, would it?

A. No, sir.

Q. Just as these premiums did not appear?

A. No, sir.

The Referee: We will take a recess for five minutes now.

(Which was accordingly done.)

Redirect examination by Mr. Folonie:

Q. Now, Mr. Bush, the figures you gave here, on which you gave us the percentage of profit and loss on your direct testimony, were prepared on the basis—were authorized basis, taking into account authorized insurance ceded and assumed, and those arising out of premiums inclusive of consideration of those authorized items; is that correct?

A. Yes, sir.

Q. And for convenience, I will use the term "authorized basis" to designate that class of figures. Now, take your underwriting experience by classes for 1917, and will you read the printed instructions on that and indicate the basis [fol. 477] on which that report was to be returned?

A. (Reading:) "This report must be made on net premiums and net losses paid. By net premiums and losses is meant premiums and losses less return premiums and reinsurance in companies authorized to do business in Missouri, and no other deduction should be made. No items of marine and inland business should be included in this report except the item of motor vehicles on line 31 of this report."

Q. Now, I note that says premiums and—on net premiums and net losses paid?

A. Yes, sir.

Q. Now, you made your computation in testifying here respecting losses on an incurred basis, did you not?

A. In my direct testimony; yes, sir.

Q. Now, in this blank, those are on a paid basis, are they not—in the underwriting blank?

A. They are on what I would call a written basis.

Q. I am talking about the losses.

A. Yes, the losses are paid basis, pardon me.

Q. And the premiums are on a written basis on the blanks, are they not?

A. Yes, sir.

Q. Now, what reinsurance was taken into consideration in preparing the 1917 underwriting by experience blank ceded and assumed, or both, as far as authorized companies were concerned?

A. It was excluded.

Q. What was?

A. The reinsurance assumed was excluded and reinsurance ceded was excluded. "This report must be made on

net premiums and net losses paid. By net premiums and losses is meant premiums and losses less return premiums [fol. 478] and reinsurance in companies authorized to do business in Missouri." I will correct my statement, please. It does include reinsurance received.

Q. What about the reinsurance ceded; is that taken into account as you understood and interpreted the blank?

A. No, sir.

Q. So that you do have your reinsurance assumed but not your reinsurance ceded, as far as the authorized reinsurance is concerned; is that correct?

A. Yes, sir.

Q. Now, in what class is marine and inland business—or as you called it, "ocean marine and inland marine business"? This blank provides that you are to include the motor vehicle business only?

A. Yes, sir.

Q. And in filling out this blank, did you undertake to follow the directions of the blank as to giving the information inquired for?

A. That is what we strive to do, is to try to fill out what the blank calls for. We don't always know what purpose it is to be used for, but we try to give the information that we think is required. Sometimes it is rather difficult to interpret the several instructions, but we try to give it as near correct as possible, according to the requirements of the blank.

Q. Now, I note that we have listed classifications down to No. 36. Now, how many classifications have you, or how many classes of business have you in the batch that you were testifying about on your direct examination?

A. Well, there would be a great many more classes—that is, in numbers you are speaking of?

Q. Yes.

A. A great many more. I believe the classification of all risks are some 900 or nearly 1,000 in number, I believe off hand.

[fol. 479] Q. Now, was the expense as computed in this 1917 underwriting experience of your company, prepared on an earned premium basis?

A. No, sir.

Q. Were they prepared upon an incurred basis?

A. These expenses were prepared from the paid basis, as shown in the annual statement of the company.

Q. And if there is any discrepancy between these figures and the others, those that you gave here yesterday, can you give any further explanation than the fact that they are prepared upon a different basis? Is there any other explanation in the way, I mean, of errors or mistakes in figures?

A. Well, there is quite different method employed. Here I was trying to get as nearly accurate as possible an expense total that should be applied to the State of Missouri.

The Referee:

Q. What do you mean when you say "here"?

Q. In the expense data testified to yesterday on direct examination. Whereas, on this blank——

The Referee (interrupting): Report to the state.

Q. (Continuing:) —of '17, underwriting experience by classes, the figures were entered not so much for the purpose of ascertaining the exact situation as it was to give the information that was called for, not knowing what ultimate use was to be made of it, and not being interested in that side of the question? In other words, your underwriting by classes sought and undertook to separate your items so far as possible, so far as they would be applicable, to the different groups as distinguished from attempting to arrive at a correct total?

A. Yes, sir.

[fol. 480] Q. Now, when you came to your annual statement and tax statement, do those correspond with the figures you have given here as to totals?

A. As to premiums and losses; yes, sir.

Q. Now, your expenses were not on the—your annual statements—were not on your annual statement and did not show on there at all?

A. Not unless you construe this an annual statement.

Q. I mean, the annual statement blank?

A. No.

Q. No provision for stating expenses?

A. No, sir.

Q. And so far as the information therein called for, namely, premiums, the earned premiums and the incurred losses, do they correspond with the figures you have given here in your testimony?

A. Yes, sir.

Q. Now, to go to the year 1918 will you read the printed instructions as contained on that one as it was before being changed? I note it is changed with a typewriter there. How did it read as first printed?

A. (Reading:) "Report gross business, written, gross premiums received, and gross losses incurred, less cancellations, on each item in each class without deducting reinsurance ceded or adding reinsurance assumed, except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company, such assumed reinsurance should be reported."

Q. Now, Mr. Bush, I will ask you whether the blank in such printed form was changed. I note that it is changed in typewriter on the one produced here by the state. Was [fol. 481] it in the original printed from, or in the changed form when it came to you originally for your action?

A. It was the original printed form.

Q. Did you make a return on it pursuant to that instruction or did you receive any request from the insurance department before returning it?

A. I don't care to state now, but we couldn't—as I read that requirement, I really would not know what to put down there. I couldn't understand it, so I reported my net business written, net premiums received and net losses paid. You see, the blank reads, "gross business written, gross premiums received, and gross losses incurred, less cancellation." Now, of course, you couldn't take cancellations off of losses incurred. So, it leaves an avenue of uncertainty there, and I arrived at the best thing I could by using the net premiums written and the net losses paid. Now, this blank excludes all reinsurance, both assumed and ceded.

Q. And did you in filling your figures of premiums in this, follow those directions by excluding all reinsurance from consideration entirely?

A. Yes sir.

Q. Now, I will ask you if you took the 1917 figures on pre-

miums, which includes consideration of assumed re-insurance; if you took those and add the premiums there shown to the premiums shown in 1918, which exclude re-insurance from consideration entirely, what kind of a figure would you get by adding the two together?

[fol. 482] A. It would not be relative. It would be adding two different combinations together, and it would not produce the sum total of two years meaning anything.

Q. So, if you added these five years together, which include these two, would the total be indicative of any one particular kind or class of premium?

A. No, sir; I would not think so.

Q. Now, I note that on this 1917 blank you have thirty-six classes on which you report, and on 1918, you have eighty-one; is that correct?

A. Yes, sir. Of course, those are state numbers and we really don't follow those except to group our numbers, in there according to those divisions there (indicating).

Q. I am now referring to 1918 underwriting experience by classes—in my last question. You so understood it, did you?

A. Yes, sir.

Q. Now, I note on the back of this 1918 blank, you have, "Interest earned on unearned premiums on Missouri business," and a figure carried out opposite that. How did you undertake to make that computation, if you remember?

A. Well, there is quite a line of different opinions on that. That interest on unearned premiums in Missouri, of course, we attempted at that time to allocate that on the basis of the unearned premiums in Missouri to the company, unearned, and that figure that is in there, we arrived at interest-earning basis and applied that to the Missouri portion; I believe that was the method.

Q. When you say you arrived "at an interest basis," what do you mean?

[fol. 483] A. We took the outside revenues as shown in the annual report of the company, and on the capital stock and surplus that bore a certain—the outside revenues aside from the premiums, interest earnings as shown in the annual report, calculated together—calculated to a certain fixed, definite amount. Now, that was a certain percentage of the unearned premiums, we will say. That is, it was 3

per cent, or 4 per cent, or 5 per cent of the unearned premiums that produced that figure. Now, then, the Missouri unearned premiums was, we will say, 2 or 3 per cent of the company unearned. We applied that 2 or 3 per cent of that earnings, therefore—of the 6 per cent earnings to allocate that amount to Missouri.

Q. Well, let me restate it in lawyer language, which will probably be wrong, but to see whether I understand you. You took the interest rate or earning rate which all your invested assets earned for your company, and applied that rate to the proportion of unearned premiums which Missouri bore to the United States, and thus arrived at the interest of Missouri unearned premiums. Do I state it?

A. Yes, sir; I believe so.

The Referee: Pardon me. You took the earnings from sources other than what?

A. Other than premiums.

The Referee: Yes. And on the assumption that the premium reserve fund had been earning money?

A. Yes, sir.

The Referee: Q. And you took such a part of those total earnings as what?

A. As was allocated to Missouri in proportion to Missouri to the whole.

[fol. 484] The Referee: Q. And on what per cent basis?

A. The per cent that the unearned premiums in Missouri bore to the unearned premiums of the company.

The Referee: Q. But calculating your earnings on what per cent, an average per cent?

A. Average.

Mr. Folonie:

Q. The average earnings of your investment, is that it?

A. Yes, sir.

Q. Irrespective of what those investments might be?

A. Yes, sir.

Q. So you computed then, an interest or return on all your unearned premiums?

A. Yes, sir.

Q. As a matter of fact, are your unearned premiums all invested?

A. I would say "no" but I don't know about that. I have no means of knowing whether the unearned premiums were invested or not. That, to begin with, the investment would be handled at the home office, and whether or not the unearned premiums were invested, I could not say.

Q. Well, do you collect in all the unearned premiums?

A. No, sir.

Q. Well, would you have the uncollected portion of them invested?

A. No, sir.

Q. Well, you recognize, don't you, Mr. Bush, that the method of calculation that you adopted is erroneous to that extent, at least?

Mr. Jacobs: One minute. The defendant objects to that question as leading.

Mr. Folonie: I will withdraw it. Get two lawyers.

Mr. Barker: Yes, objecting to that as leading and—objecting at once, and it must be pretty bad.

[fol. 485] Mr. Folonie:

Q. Mr. Bush, is a calculation, in your opinion, which computes an interest on all the unearned premium reserve whether collected or uncollected, in your judgment, a proper basis?

A. I would think not. I really could not see the connection. To tell you the truth, I couldn't see the connection. I filled out those amounts there for the purpose of supplying that information, but that it was correct, I don't know. I wouldn't state that it was correct, or indicative of anything.

Q. Well, do you know any better way to figure it?

A. No, I do not.

Q. Do you know any method of ascertaining how much of your unearned premium is invested, and how much is uninvested?

A. I do not.

Q. Now, in the event that your company wrote a 5 year policy in a given year, with a premium of $100, what reserve would you set up as an unearned premium reserve on that $100 at the end of that year?

A. Why, I believe it is 80 per cent, if I recall correctly.

Q. How much in cash would your company get—would your company in fact receive, assuming the commissions to be paid the ordinary commission usually obtaining—about how much in cash would your company derive out of that $100, assuming it was immediately paid?

A. Well, assume that the commissions were 25 per cent we will say?

[fol. 486] Q. Yes.

A. The company would then receive, if they collected the premium, $75.

Q. Now, where would you get the amount to make up the $80 unearned premium reserve? Where would you get the difference between the $75 and the $80?

A. Well, that is a book figure. Of course, it would have to come one of something else; some other premium would have to contribute there, as a matter of book figure.

Q. Do you, as a fact or in fact, to your knowledge, set aside unearned premium reserve so-called as a separate fund and keep it separate from the other funds of your company?

A. I don't know, but I would say "no."

Mr. Jacobs: Your Honor, the defendant moves that answer be stricken out; the witness prefaces his answer by saying he doesn't know, and then answers the question "no."

Mr. Folonie: Goes to its weight.

The Referee: That part of the answer may be stricken out.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Folonie:

Q. Now, I am calling your attention to the 1919 underwriting experience by classes. Will you read the printed instructions appearing on that as to the basis to be used for making the return for that year?

A. (Reading:) "Gross direct business written, less only cancellations; Gross direct premiums received, less only [fol. 487] returned premiums; Gross direct losses paid, less only salvage, on each class as indicated; Re-insurance either

ceded or assumed should be disregarded entirely, except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company, then such assumed reinsurance should be reported."

Q. Now, in making this return, did you undertake to follow those directions?

A. Yes, sir.

Q. Is that on the same basis as the 1917 return?

A. No, sir.

Q. Is it on the same basis as the 1918 underwriting experience by classes return?

A. On the same basis as the 1918 was furnished, but not on the same basis of the original instruction. The 1918, I believe, called for gross less premiums, and gross losses less cancellations, but I couldn't deduct the cancellations from the losses. The wording is slightly different.

Q. Do you remember that is the one you changed in typewriter? Now, tell us the difference between the two, with both before you.

A. As it was changed: "Report net business written; report gross direct business written; net premiums received; gross direct business written less only cancellations." Now, that would be the same thing. "Gross direct business written, less only cancellations"; that is for 1919. Now, 1918: "Report net business written." There is a distinction of direct business there. The term "direct" is used, but my inference would be that that is what they were referring to there—or the same thing.

[fol. 488] Q. All right. Now, I note that it uses the term, "Gross direct losses paid, less only salvage." Is that the same as an incurred loss?

A. No, sir.

Q. "Re-insurance either ceded or assumed should be disregarded entirely." I suppose you did disregard it in making up this particular return?

A. Yes, sir.

Mr. Leahy: Is that 1919?

Mr. Folonie: The year 1919, to which I am directing attention.

Mr. Folonie:

Q. Now, your attention was called to how you made up your expense statement on the back. I will ask you what the printed directions on the back as to expenses are. I call your attention to the words at the very top of the page here, as to how they direct them: As to whether paid or incurred expenses are to be taken?

A. The blank calls for "Paid in Missouri." That is the expression: "Paid in Missouri." Now, then, below, it says: "Pro-rate for Missouri." Now, that of course, causes this confusion in your mind: That if you put up there the paid in Missouri, according to the blank requirement, you might or might not be called upon to exclude those same payments from down here. There is a doubt. Now, of course, that has crept in, I think, as shown by our report.

Q. Now, I think we will—to get that even more clearly on the subsequent blanks, or particularly 1921, I will pass that for comparison. Now, I call your attention to 1920 return. What basis does the printed direction of the blank require you to take there?

A. Instructions here read: "Report Gross direct busi- [fol. 489] ness written, less only cancellations; Gross direct premiums received, less only returned premiums; Gross direct losses paid, less only salvage, on each class as indicated; Re-insurance either ceded or assumed should be disregarded entirely, except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company, then such assumed reinsurance should be reported."

Q. Now, how many classes or classifications in the numbering on the left hand column did they call for that year?

A. They run from 1, with certain skips, up to 88.

The Referee: What year is that?

Mr. Folonie: 1920.

The Witness: This is 1920.

Mr. Folonie:

Q. Now, 1921, what basis is that on—read the printed portion on the page there.

A. (Reading:) "Report Gross direct business written,

less only cancellations; Gross direct premiums received, less only returned premiums; Gross direct losses paid, less only salvage, on each class as indicated; Re-insurance either ceded or assumed should be disregarded entirely, except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company, then such assumed re-insurance should be reported."

Q. Now, is that the same as the 1917 requirements?

A. No, sir.

[fol. 490] Q. Is either this or the 1917 upon the basis upon which you have here testified?

A. No, sir.

Q. I mean on your direct examination?

A. No, sir.

Q. Now, I call your attention to the directions on the back of this 1921. What is the printed direction respecting—well, I will ask you to read the captions of the two parallel columns, totals for all the states, and the column joining it, so as to give us the captions of the columns.

A. Well, we start out with the first group which is "Paid in Missouri." Then it is sub-divided, and there is a space between, and then says, "Totals for all states."

Q. That is the first column?

A. Yes.

Q. And the adjoining column?

A. Reads: "Ratio of Missouri business to the total business."

Q. What is the note printed below that?

A. (Reading:) "Ratio referred to above should be the same for all items, 7 to 17 inclusive."

Q. Are 7 to 17 the items which contain the caption's total for all states and ratio of Missouri business to total business?

A. Yes, sir.

Q. You were asked by counsel specially about item 4, both under the caption "Paid in Missouri," "Federal gross premium tax."

A. Yes, sir.

Q. Then your attention was called to item 17, where the item of "Franchise tax and Connecticut stockholders' taxes" are shown?

A. Yes, sir.

Q. Now, in assigning or computing a portion to Missouri, it was stated that you put in the direct to Missouri, and [fol. 491] then you pro-rated a part of the remaining states' expenses to Missouri. Is that in conformity with the blank as you interpreted it and understood it?

A. Your question was rather long. I say "yes," if I followed you correctly. Read it please, will you, Mr. Blume?

(Question read by the reporter.)

A. Yes, sir.

Q. Now, your attention was also called to the item of "Inspections." Item 5 under "Paid in Missouri." Will you read the printed portion of it?

A. Under "Paid in Missouri," Item 5, "Inspection and Rating Bureau expenses."

Q. Now, under item 11 under the other subdivision, how does that read?

A. (Reading:) "Inspections and surveys, including Underwriters, Boards and Associations." "Do not include amount entered under Item 5 above."

Q. Now, counsel asked you in substance whether by excluding Item 5, that is the map and survey item in Missouri, whether the effect of this was not to charge to Missouri not only its direct map expenses but also a pro-rata of the map expenses of other states, and I think you stated that was the effect of so doing?

A. Yes, sir.

Q. In so making these answers in these blanks, did you follow the blanks as you understood and interpreted them?

A. Yes, sir.

Q. You recognize the fact it is not right, don't you?

A. Yes, sir.

[fol. 492] Q. But you did it in the way the blank asked you for it?

A. Yes, sir.

Q. And if they would ask you for some other wrong way, you would give it to them, too, would you?

A. Yes.

Q. In other words, you are willing to give it to them in just as many wrong ways as they ask, are you?

A. We were attempting to give it as they require it.

Q. Now, is this underwriting by experience requirement,

is it general in the states in your territory—this requirement to divide them into classes like this?

A. Off hand, I would say there are five or six states out of the seventeen.

Q. Well, now, to get at some more differences in these underwriting experience blanks. I note there is an item of investment expense on the 1919 blank; is that correct?

A. Yes, sir.

Q. And you filled out a figure?

A. Yes, sir.

Q. Now, take the 1921 blank here: Is there any item of investment expense asked for on that blank—or given?

A. That reads——

Q. (Interrupting. "Investment expenses?"

A. "Investment expenses." I don't see it; no, sir.

Q. Now, you were asked about Federal excess profits taxes. I will ask you or call your attention to 1919. Is that specifically asked for in this printed blank for that year?

A. Yes, sir.

Q. Now, are these underwriting experience by class blanks, do they undertake to cause a calculation by you [fol. 493] of the earned premiums year by year as required in the annual statement?

A. Yes, sir.

Q. That is, the underwriting experience blank requires you to show an earned premium like the annual statement does?

A. The annual statement does not require an earned premium—that is, for the state. Requires it for the company but not for the state.

The Referee:

Q. Requires it for all of the business done by the company throughout the United States?

A. Yes, sir.

Mr. Folonie:

Q. I was referring to page 8 as it appears in the 1920 report styled, "Underwriting exhibit." That requires an earned premium basis, on that exhibit on that page, does it not?

A. Yes, sir.

Q. Is there any corresponding requirement on these underwriting experience by classes blanks?

A. No, sir.

Q. Now, that map item, for example: Counsel asked you on cross examination whether that was not productive of a duplication of expense, as such item was carried out if you charge Missouri with its direct amount, and then charged them with a pro-rata of other states in addition—or the inspection item, rather. Is that productive of a duplication as the blank requirement of that blank caused you to answer it?

A. Well, possibly not. We took out that item. We put it in as direct, and that item, we will say, of direct expense—assume it was $10,000. We took that out and applied that as a direct item. The grand total we will assume [fol. 494] was $400,000. We deducted the $10,000 from the $400,000 and pro-rated the balance. Now, that would put into the State of Missouri, of course, the direct charge or the direct payment, and also put in a pro-ration of all other.

Q. To that extent, it would be a duplication?

A. To that extent, it would be a duplication.

Q. Could you avoid a duplication and answer the blank as it was printed?

A. I would say not. The blank specifically says, "Deduct Item No. 5 or 4—whatever it is."

Q. And that is what you did?

A. (Continuing:) And pro-rate the rest. And that is what I did.

Q. You have been asked quite a good deal about rates. When there comes to you a report on the amount of premiums forwarded by an agent, does that come to you in the form of dollars and cents, or does it come to you in the form of the report of the rate used in reaching this amount?

A. Comes to me in the form of dollars and cents.

Q. And whether those dollars and cents are produced by a rate of 10 or 15 or 20 cents, do you have any knowledge or any interest at all?

A. Absolutely none.

Q. Do you have anything to do with the rates which are productive of the money which you enter on your books—and keep a record of the money?

A. No, sir.

Q. Counsel asked you respecting 1921 figures, as I recollect it. He asked you about the—a figure of 83,000 and some dollars, the premiums on assumed reinsurance, and what proportion it bore to the total net losses of the year, [fol. 495] and I think you said it was about 15 per cent?

A. Yes, sir.

Q. Now, I will ask you whether that figure which he gave you on assumed reinsurance was a gross or a net reinsurance premium figure?

A. That $83,000 is a gross figure.

Q. And what were the total gross premiums for the State of Missouri for that year?

A. $791,776.40.

Q. Now, as an accountant, do you recognize the propriety in ascertaining a calculation of the proportion which reinsurance premiums bore to the premiums of your company, to take the gross premiums on assumed reinsurance and compare them to the total net premiums, and thus arrive at a percentage?

A. It wouldn't mean anything to me to do that.

Q. If you wanted to find out the proportion of the assumed reinsurance, with what figure would you compare the gross premiums on assumed reinsurance, if you were undertaking to find the proportion it bore to the business of your company for that year?

A. That I would attempt to compare to the gross direct business.

Q. You have been asked by counsel as to the contingent which was promised or contracted for with St. Louis agents. Does that contingent amount to a very substantial sum?

A. We have never paid a very large sum. I believe it ran one year something likek $800 or $900, but I am speaking offhand, and it has never been very substantial. There have been some years where we have paid no contingent commission.

[fol. 496] Q. Now, you have mentioned the items which under your underwriting experience statement, the premiums which were omitted from those statements—did those omitted premiums which you have testified to here appear in your tax statement to the State of Missouri for the same year?

A. Yes, sir.

Q. And do those apportions so omitted from the underwriting experience by classes report appear in your annual statement figures for the same year?

A. Yes, sir.

Q. You answered counsel that reinsurance was, in most cases upon risks large in size. Do you, by your reinsurance arrangements, sometimes reinsure small risks also, or is it confined to the large ones entirely?

A. I know of no limitations, personally.

Q. Do you have any treaties in your company by which one company takes over a certain part of business of a certain class or kind?

A. Yes, sir.

Q. It is customary in such cases for the direct writing company to keep a part of the risk so reinsured?

A. Yes, sir.

Q. Do you ever reinsure at all, and keep none yourself?

A. No, sir.

Q. Does the reinsurance or the determination to reinsure depend in any way upon liability to conflagration, or the nature and character of the adjacent property to that particular property in question, do you know?

A. I would say that I don't know as to that. Possibly [fol. 497] the idea of reinsurance might be to reinsure a very large liability, but it would not necessarily follow that it was a specially hazardous one any more than some other risk.

Mr. Folonie: That is all with this witness.

The Referee: We will adjourn until 2 o'clock, then.

(Whereupon, an adjournment was taken until 2 o'clock in the afternoon of the same day, the same being Tuesday, June 19, 1923, at which time parties reconvened at the same place, and the following proceedings were had:)

Mr. F. G. Bush, recalled to the stand for further examination, was examined and testified as follows:

Redirect examination continued by Mr. Folonie:

The Referee: Proceed.

Q. Mr. Bush, I want to ask you one or two more questions. Mr. Bush, you have in your underwriting statements to the

State of Missouri, where you returned on the basis of your direct writings less return premiums, and in the testimony you have given here today your figures go in reduction of the agents' commissions as shown in those underwriting blanks on the expense statements there.

A. I don't believe I quite understand that question.

Q. In your testimony as you have given it here, have you credited against the item of agency expense any amount which would go in reduction of the amount returned to the [fol. 498] state in the underwriting by class expense statement?

A. Yes, sir.

Q. What?

A. Commissions on reinsurance.

Q. What?

A. Commissions on reinsurance ceded. That is, the commissions coming back to the company.

Q. Now, does that go in partial explanation of the discrepancy between the figures counsel called your attention to on expenses and the ones you have given here?

A. That would reduce the figures of my expenses about which I testified first, as compared with the expense shown on the underwriting experience report.

Q. You mean it would make the figures you gave it here less than on the underwriting statement?

A. Yes.

Q. Is there any other explanation you can give on the subject of why the expense you gave here should be less than it was on the underwriting statement?

A. An attempt at a finer distribution would account for it. As I said before, the blank was filled out the underwriting experience blank was filled out giving such information as we thought the blank called for.

Q. And were there deductions in that?

A. Yes, there would be some deductions in there on very, very close analysis, but I attempted to eliminate entirely on my distribution of expense made up, about which I testified yesterday.

Q. And that would also go in part to explain the discrepancy, would it?

A. In fact, I should say that that would entirely account for the difference.

[fol. 499] Q. The two things together that you have mentioned?

A. Yes, sir.

Mr. Folonie: That is all with this witness.

Recross-examination by Mr. Jacobs:

Q. Mr. Bush, apropos of your statement about how you arrived at the apportioned interest on unearned premium reserve and from other sources—with Mr. Folonie—you say that you took as a basis the figure of 6 per cent, as the ratio of percentage?

A. No, sir; I don't remember that I used that figure 6 per cent. I did not intend to at any rate.

Q. Perhaps I misunderstood you. Do I understand that you arrived at the interest earnings which appear in your annual statement report by taking the total earnings of your company and apportioning that part of it to the State of Missouri which corresponds to the relationship between the total business done in the State of Missouri and the total business of the company?

A. That in substance is correct, yes.

Q. It is an accurate figure, isn't it?

A. Accurate for that basis. I would not really confine myself to saying it was entirely accurate. It was as accurate as I knew how to get at that time to follow those requirements.

Q. Now, with reference to your surplus, can you give your company's surplus for 1916?

Mr. Folonie: We object to it on the same constitutional grounds that were offered here yesterday.

The Referee: Overruled.

[fol. 500] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Well, I have not that figure with me, but the annual statement would show, I believe, that figure. I think I haven't it with me.

Mr. Jacobs:

Q. Well, we will have to get it later, then. Is it correct that your surplus for 1917 was $13,287,434?

A. I haven't that figure with me. I have none of those figures here with me.

Q. Can you get that figure from any of these reports which you filed with the State of Missouri?

A. No, sir.

Q. I did quote you the wrong figure there. I show you your annual statement report of the Aetna Company to Missouri on page 5, and ask you whether or not that sets out your surplus for 1916?

A. That sets out the surplus for 1917.

Q. How much is that?

Mr. Folonie: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $8,561,967.69.

Mr. Jacobs:

Q. Now, I will get you to look at the next statement—at the annual statement report of the Aetna Company in Missouri on page 5 for 1921, and state whether or not it shows your surplus for that year?

A. Yes, sir.

[fol. 501] Q. How much is that?

Mr. Folonie: Same objection—same constitutional objections that were urged yesterday to the court.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $5,067,090.14.

Mr. Jacobs:

Q. Does that show an increase in surplus from 1917 to 1921 of $505,122.45?

A. Well, I haven't calculated that, but I assume your figures are right. I would assume "yes" to that. That is the difference between those two figures?

Q. Yes.

A. Yes, sir.

Q. No, your unearned premium reserve 1917 amounted to how much?

A. The unearned premium as shown in this statement for 1917, $13,287,434.33.

Q. Now, will you look at the annual statement of your company to Missouri for 1921 and tell the referee what your unearned premiums reserve that year was?

A. 1921, the unearned premiums, $20,210,193.94.

Mr. Folonie: That is for the whole United States?

A. Yes, sir.

Mr. Jacobs:

Q. Does that make a difference, an increase in your premium reserve between 1917 and 1921 of $6,922,755?

Mr. Folonie: Object to that on the ground — makes no difference in this lawsuit.

The Referee: Overruled.

[fol. 502] (To which action and ruling of the referee, the plaintiffs by counsel than and there at the time duly excepted and still except.)

A. As I said before, I assume that you have calculated that right, and I will say "yes."

The Referee:

Q. Is there any difference between the amount of the unearned premiums and the unearned premium reserve?

A. I should say not; no, sir.

Mr. Jacobs:

Q. Speaking with reference to your examination on redirect about when you testified to the items of interest credited to the State of Missouri. Now, I believe you testified this morning, and it was developed as to the amount of a certain set of figures—as to the amount of dividends

paid, something like $5,500,000 during the 5 year period; that is correct, isn't it?

A. Yes, sir.

Q. And an increase in surplus of another ½ million, or a little more?

A. Yes, sir.

Q. Now, these payments and these earnings came rather during that period form your interest and interest earnings and rents, rather than any profits on investments, didn't they?

A. I couldn't say as to that I couldn't testify as to that.

Q. On 1917, is it a fact that your profits on investments amounted to $13,883, and your losses on investments, $782,930?

Mr. Folonie: Object to it as incompetent, and permitting an inquiry as to earnings on invested capital of the company; is operative, if the statutes be construed to so permit, [fol. 503] to deprive the plaintiff of its constitutional right as to taking property without due process of law, confiscation of its property; is in contravention of the constitutional privileges, rights and exemptions, to which the attention of the court was called in my objection of yesterday.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Now, in 1918, were profits on investments $45,858, and losses on investments $473,000?

Mr. Folonie: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Profits on investments, $92,907; losses on investments, $373,008?

A. Yes, sir.

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

[fol. 504] Mr. Jacobs:

Q. Profits on investments, $1,269; losses on investments, $27,685?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. And 1921. Profits on investments, $55,686; and losses on investments, $421,297.

Mr. Folonie: Same objection, Your Honor.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Now, there were no dividends paid, then, out of profits on investments, were there, in that five years; and couldn't have been, could there?

Mr. Folonie: We object to that on the ground the witness has not been qualified; on the ground this assumes a verity of figures not known by the witness; and object upon all the constitutional grounds which have already been presented and urged to the court heretofore.

The Referee: That is a matter of obvious deduction, is it not, Mr. Jacobs?

Mr. Jacobs: Withdraw the question.

Q. The point I am trying to make, Mr. Bush, with reference to that particular question is that your earnings and youd profits come from interest and rents, according to [fol. 505] your annual statement report during that period: didn't it?

A. On the face or it; yes, sir.

Q. Yes, the face of your report reflects the true conditions, doesn't it?

A. I should say so, although as I say, I am not qualified to testify, nor have I attempted to testify as to the detail of these figures, because I did not make them up. That whole blank is furnished by the home office, and I have nothing to do with it at all.

Q. But you took them as reflecting the facts?

A. Yes.

Q. Do you know whether there is considerable speculation on the part of your company in industrial stocks?

Mr. Folonie: Object to that as incompetent and immaterial, and urge all the constitutional grounds which we have heretofore urged upon the court's attention, and which the court at the present time has not given effect by sustaining the objections as we think the court should do.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I do not.

Mr. Jacobs:

Q. With reference to about the last question asked you on re-direct—there appeared a difference in the various

years from 1917 to 1921, inclusive, both ways this morning, between the expense reported in your underwriting ex-
[fol. 506] perience to Missouri and your testimony here of amounts varying from $3,000 to $44,000 per year.

A. Yes, sir.

Q. Aggregating something like $75,000 to $100,000, didn't it?

A. I think so, yes.

Q. That difference was that there was a greater expense charged apparently on your annual report to the state than you now testify to—to that extent?

A. Yes, sir.

Q. Now, you say that there is a partial explanation of that on certain agency commissions on reinsurance, which were deducted in your present testimony from the general expense account, and added to the agency commissions?

Mr. Folonie: Deducted.

A. Deducted from the agency commissions.

Q. Well, I misunderstood you. I thought you said you deducted them from the general expense, and put it in another item on agency commissions?

A. No, sir; I deducted it from the total of the expense which reduced my sum total expense, and which sum total expense includes agency commissions.

Q. Why did you make that reduction in your testimony?

A. Well, I was attempting to get at the closest possible figure I could, for purposes of arriving at the true profits—is what my attempt was.

Q. Weren't you doing likewise when you made this report to the State of Missouri?

A. I should say not. I was at that time trying to fill out that blank as best I knew how, not giving it the careful analysis and accurate——

[fol. 507] Q. (Interrupting.) You are cognizant, of course, that the underwriting experience furnished the basis of rate-making in Missouri, didn't you?

Mr. Folonie: Object to that as assuming a fact quite contrary to any proper measure of rate making.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I did not.

Mr. Jacobs:

Q. Now, do you know to what extent that particular item reduced your expense account in your testimony?

A. Not very materially. It was small, as I recall it.

Q. About how much was it?

A. That took off approximately $27,000.

Q. On the five years?

A. Yes, sir.

Q. Now, you say that there might have been a further explanation in the difference between the two expense accounts: One in your report to the state, and one in your testimony, by a finer distribution of various items. Now, that is a generalization that I wish you would explain a little more fully, and give us the items and the amounts.

A. Well, I believe in the original distribution at the time, for instance, there was an item of taxes that was shown in the actual figure at the time the underwriting experience was made up—shows it in total in the annual statement.

Q. Now, let me understand this: Was this the Federal tax?

A. I don't just recall offhand what that was, but there [fol. 508] was a considerable item called "tax." Possibly I can pick it up for you in a moment. I can explain the principle to you first. And that, it afterwards developed, contained items which could not properly have been and would not have been reported to Missouri if the detail had been known. Now, that would account for distribution.

Q. Let's see about that. An item of expense which, had it been properly understood, would not have been allocated to Missouri—that was not a direct but an allocated expense?

A. Yes, sir.

Q. All right. Now, what was the matter with that? Why shouldn't that have been allocated to Missouri, and what was it in particular?

A. Possibly if I refer to these statements, I can find it. I think it was 1920 or 1919. Well, I can explain right off hand, a portion of it at least. I gave you the principle here.

This item here of $849,000 set up as Federal taxes. Now, that included for instance the 1 per cent premium tax.

Q. Which was paid in Missouri?

A. Which was paid in Missouri. And it should not have gone in.

Q. Let's understand this now. There was a direct charge made in your annual report to Missouri of the 1 per cent premium tax?

A. Yes, sir.

Q. Then you included that same tax in your entire figure of $849,645?

A. Yes, sir.

Q. And allocated it back to Missouri?

A. Yes, sir.

[fol. 509] Q. And that went in in that underwriting report in that fashion?

A. Yes, sir.

Q. Now, can you show us any other instance like that, where there was a duplication of expense in your reports?

A. That inspection survey item that you had up this morning; that is another.

Q. Well, we had that one up.

A. That is quite a difference, and on the same principle.

Q. And others besides that? This item that you have discussed with reference to Federal taxes; that was for the year of 1920?

A. Yes, sir.

Q. And that duplication appeared in your underwriting report for that year?

A. Yes, sir.

Q. Did it appear likewise in your underwriting report for the other years? The other years of the 5-year period?

A. It would not appear—I would have to take those statements and analyze them through, because there was a division or two made one way or the other that I couldn't explain offhand, but could by reference to the statements.

Now, there is a complete cut-out for all five years that we put in before: "Real estate repairs, and taxes." Those items are entirely eliminated in my second distribution. I believe that would comprise the entire difference.

Q. What is that last statement?

A. Page 3, Item 22.

Mr. Folonie: Read it.

[fol. 510] A. (Reading:) "Read estate expenses, repairs and expenses, $13,517.59." "Taxes, $16,157.50." Or a total of $29,675.

Q. Now, is that the charge that is made against Missouri or is that an amount for the whole country?

A. That is the amount for the entire company, but that amount was allocated to Missouri in the underwriting experience by classes, but not allocated in my report here.

Q. And that would be a small amount because the total amount was only $29,000?

A. This would take out a small proportion.

Q. Do you think those items constitute the entire difference between your testimony and the reports on the underwriting experience?

A. I believe they would practically explain the difference; yes, sir.

Q. And the difference is entirely due to a duplication of expenses in your annual underwriting reports?

A. Yes, sir.

Q. As I understand your explanation on re-direct, your duplication is that the duplication is wrong; that you know it should not be done, but that it was done because you thought Missouri wanted it that way, by virtue of the report blank which it got out?

A. The underwriting experience blank was filled out at that time, believing that that is or was the method requested.

Q. And by that, you mean that you understood that Missouri wanted you, in preparing an underwriting report, by virtue of the form it got up, to duplicate these various items?

A. Well, I understood from that blank, and would naturally understand from it that the state at the time had a [fol. 511] reason for calling for that information, and it was furnished accordingly without regard to what disposition the state anticipated making of it.

Q. Do you think that it is wrongful or right to duplicate those items?

A. I don't think it would be right, I don't think it would be correct.

Q. Now, I notice in one item, you made a direct charge

to Missouri, and then you deducted that amount from the total which you were charging to the United States, but your total included a similar charge from other states which in turn was allocated to Missouri?

A. Yes, sir.

Q. Then in the other item that we discussed this morning, you made a direct charge to Missouri and included that same charge in the total amount, and not only allocated to Missouri a similar charge from the balance of the states of the union in which your company did business, but also allocated Missouri's part of the sum which was charged against it as a direct charge?

A. I believe the method was the same in both cases. That is the inspection item, I believe; but the direct charge was deducted.

Q. In both instances?

A. I believe so; yes, sir. If I don't misunderstand you, yes. That would be the method. I except that tax item which I explained to you.

Q. That was one of the two items we discussed. Then it transpired as I suggested in that question, didn't it?

A. Yes, sir.

Mr. Jacobs: I think that is all.

[fol. 512] Mr. Folonie: That is all.

The Referee: Q. Mr. Bush, do your records show the exact amount of earned premiums for the year, say, 1918?

A. For Missouri?

The Referee: Q. Yes.

A. No, sir.

The Referee: Q. Would they show the total amount of earned premiums throughout the United States?

A. My records here would not, judge. The records here do not cover the entire United States, but that record would be at the home office, the Hartford office.

Mr. Folonie: May I be pardoned for suggesting. The record that would exist at the home office would be of the unearned premium and not of the earned premium. The earned would then be calculated from that.

The Referee: Q. The books are so kept then, if I understand, as that after the lapse of a given period of time,

which might vary, it would be possible to determine the amount of premium earned by the company in a given period?

A. I should say so; yes, sir; by taking the unearned premium and removing it from that written.

The Referee: Q. Of course, your records here cover only the states which are within your jurisdiction?

A. Yes, sir.

The Referee: Q. Including Missouri but not segregating Missouri from the other states?

A. Yes, sir.

Mr. Leahy: It does segregate Missouri?

[fol. 513] The Witness: Not with reference to earned or unearned premiums.

Mr. Jacobs: (Resuming recross-examination:)

Q. You never can arrive at the question of earned premiums upon which you have based your testimony, except ing as a matter of calculation, can you?

A. At the present time; no, sir.

Q. And that is the way you got the earned premiums upon which you base your testimony?

A. Yes, sir.

Q. You cannot open your books and show the definite figures on that?

A. No, sir.

Mr. Folonie: Q. It is a conclusion from the figures that appear on your records?

A. Yes, sir.

Mr. Jacobs:

Q. And is the result of a question of averages, isn't it—for the whole country?

A. Yes, sir.

Mr. Jacobs: That is all.

Mr. Folonie: That is all.

(Witness excused.)

M. M. HENDELE, having been previously sworn, was recalled for further examination on behalf of the plaintiff, and testified as follows:

Direct examination by Mr. Folonie:

Q. Your name, please?

A. M. M. Hendele.

Q. You have previously testified here respecting the figures of the Mechanics & Traders Insurance Company, have you not?

A. I have.

[fol. 514] Q. Are you employed also for the National Fire Insurance Company of Hartford, Connecticut?

A. Yes, sir.

Q. Do those two companies have their offices in the same suite of offices in Chicago?

A. Yes, sir.

Q. And are their records in the same offices?

A. Yes, sir.

Q. And do you have charge and control of the records of the National Fire Insurance Company in the same manner as you have of the other company about which you have previously testified?

A. I have.

Mr. Barker: What company is this—pardon me?

Mr. Folonie: National Fire Insurance Company.

Q. Mr. Hendele, have you in the books and records of your company in the National Fire Insurance Company, a record of the premiums for the years 1917 to 1921, inclusive?

A. Yes, sir.

Q. And in what books do you have the records of the premiums of your company respecting both their direct business and their reinsurance business? What do you call your books in which you have your premium records?

A. Register books and abstract books.

Q. Do you also have agency balance books, such as have been described here, to show the premiums received and return premiums as they are reported to you by agents?

A. Yes, sir.

Q. Have you been with the National Fire Insurance Company during this period, 1917 to 1921, inclusive?

A. Yes, sir.

[fol. 515] Q. And have the books and records under your general control and management during that time as an accountant of the company, have they been?

A. Yes, sir.

[fol. 516] The Referee: Q. Mr. Witness, do the amounts of the unearned premium reserve and the unearned premiums correspond; is that the same thing?

A. They may differ.

The Referee: Q. What is the difference? Why do they differ?

A. That would be a fluctuating figure, depending on the business immediately written after you have made the calculation. That result would be affected by new business or [fol. 517] business handled, or old business on which you sustained a loss.

The Referee: Q. In other words, you don't count the unearned premiums as being the unearned premium reserve—they are not the same thing?

A. In a general way, I do, but I say they may be different. They may be alike.

The Referee: Q. Are separate accounts kept of those items?

A. No, just a book figure is kept of the unearned premium reserve. One calculation is made.

The Referee: Very good.

Mr. Folonie:

Q. For practical purposes, they are treated as the same, are they not?

A. Yes, for practical purposes.

Q. Although in fact, there would be probably a slight variation between the two?

A. Yes, there can be.

Q. That would, in course of time, adjust itself and the difference is comparatively small, is it not?

A. Yes, it is. I was just trying to draw out the technical difference there.

Q. Yes, there is a difference, but they are treated the same—for practical purposes, they are the same?

A. Yes.

[fol. 518] Q. What was the amount of your Federal taxes year by year for the period?

A. 1917 $294——

Mr. Jacobs (interrupting): Of course, it is understood we are objecting to any allocation of Federal taxes, as we have consistently during the hearing.

The Referee: Overruled.

(To which action and ruling of the referee, the defendant by counsel then and there at the time duly excepted and still excepts.)

Mr. Folonie: This is not an allocation, as I understand it.

Mr. Folonie:

Q. Is this any allocation, Mr. Hendele, of a general Federal tax, or is this the premium tax?

A. This is the actual tax paid on Missouri premiums——

Mr. Jacobs (interrupting): We are objecting to any charge against Missouri for the payment of any Federal tax of any kind.

Mr. Folonie: That is a very comprehensive objection.

The Referee: Overruled.

[fol. 519] (To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Folonie:

Q. Year by year please.

A.	1917	$294
	1918	4,103
	1919	6,034
	1920	4,873
	1921	5,490

[fol. 520] Mr. Folonie:

Q. I call your attention to what is an apparent discrepancy in figures between the underwriting experience blank and the figures given by you here, and I call your attention to your underwriting experience blank for the year 1918.

Mr. Barker: We object to that unless this witness prepared these blanks, but I am not informed as to that. Did this witness prepare these blanks as did Mr. Bush for his company?

Mr. Folonie: I don't know whether he did or not.

Mr. Folonie:

Q. Did you?

A. I did.

Mr. Barker: I have no objection to anything which he prepared.

Mr. Folonie:

Q. Now, on the back of that, it calls for expense; what is the amount of expense shown on that 1918 underwriting blanks?

A. $117,550.97

Mr. Barker: What year is that?

Mr. Folonie: 1918.

Mr Folonie:

Q. Now, you have given figures here, expense figures for 1918, to us today of $141,553.

Mr. Barker: We object to that. I don't understand that has been offered.

Mr. Folonie: Yes, that was his testimony.

Mr. Barker: Did this witness testify to it?

The Witness: Yes.

Mr. Folonie: Yes.

[fol. 521] Mr. Folonie:

Q. Will you state wherein the discrepancy exists, Mr. Hendele, between these figures?

A. Why, yes. The underwriting experience by classes does not show all of the expenses of the company in Missouri.

Q. You mean that in preparing that blank respecting expenses you didn't put in all the expense of your company?

A. I simply answered the questions.

Q. Well, what expenses are in your figures you are giving here today, which are not shown on the blank?

A. I can't state definitely without analyzing all of the figures that were prepared at the time. But offhand, I can say that the underwriting experience by classes was prepared on one basis, and the figures that I just testified to are prepared on another basis. In other words, the underwriting experience by classes calls for premiums——

Q. (Interrupting.) I was paying attention to expense, primarily, in my question.

A. Well, the difference on the two different bases of compiling them would account for part of it, and I believe as I see the figures here, that probably Federal taxes and some of the company overhead is not on the underwriting experience blank, because at that time we didn't know what purpose these figures would be used for and naturally, we simply answered the different questions put to us at the time.

Mr. Folonie: Cross examine.

[fol. 522] Cross-examination by Mr. Barker:

Q. Mr. Hendele, what is your position with this National Fire Insurance Company of Hartford?

A. Accountant; chief accountant.

Q. Who is—As chief accountant, it is among your other duties to prepare reports to the states, including Missouri, of your underwriting experience?

A. Yes, that is all embraced in the position.

Q. And you personally do that yourself?

A. Yes, sir.

Q. So that during the five years, 1917 to 1921, inclusive you prepared the three reports that were submitted to Missouri—that is, the underwriting report, the annual statement, and the tax statement?

A. Yes, sir.

Q. Now, in preparing the underwriting report, where did you get your information on which to prepare that?

A. The premiums—well, the entire report?

Q. Yes.

A. Well, the premiums came from our tabulated cards.

Q. I was trying to call you attention to whether you had

all that information in your Chicago office—your underwriting report?

A. Yes.

Q. Yes?

A. Yes, sir.

Q. Now, take your tax report, did you get that information from your Chicago office?

A. From our records that we have at Chicago.

Q. Yes, sir. Now, your annual statements—where do you get your information for that?

A. Well, the annual statement figures, so far as apply to the company's operations, are furnished us by the home office.

[fol. 523] Q. And you accept what they furnish you on that?

A. Yes, sir.

Q. And you have no personal knowledge of that, and no record in the Chicago office to sustain it?

A. No, sir.

Q. Now, Mr. Hendele, how long have you been an accountant?

A. About fifteen years.

Q. And you are familiar with all the different methods of accounting, I assume?

A. You mean as applied to insurance?

Q. As to all forms of accounting. You are an expert accountant, are you?

A. I don't know whether I can qualify as to being familiar with all forms.

Q. Have you attended a school of accounting?

A. Yes.

Q. Have you read works on accounting?

A. Yes.

Q. And you understand the system of accounting as used throughout the United States, I assume?

A. I think I understand the theory of it.

Q. Now, then, as an accountant, do you understand that there are two kinds of expenses: One known as an operating expense, and one as a corporate expense?

A. Yes.

Q. Now, what is an operating expense?

A. Anything that applies or affects the operation of the business.

Q. Now, what is a corporate expense?

A. Well, anything that does not necessarily enter into the direct operation of the business.

Q. Now, as an accountant, it has been your duty to apportion expenses in your employment, has it not?

A. Yes.

[fol. 524] Q. And some you apportion as an operating expense, and some you apportion as a corporate expense?

A. I never had to do with anything other than operating expense.

Q. You never had to do with anything other than operating expense?

A. No, sir.

Q. Well, now, just as an accountant, for our information, take the question of charitable gifts from a corporation: As an accountant, how would you apportion that to the operating expense or to the corporate expense?

A. Well, I never had—never have given that fact much thought, because our company never having funds for charities—outside of the war period.

Q. Well, now during the war period, as an accountant, how would you apportion that? As operating expense or as corporate expense?

A. I think I would charge that fund that I had expended at that time as a patriotic measure, as part of the operating expense.

Q. You would charge that as an operating expense?

A. I would.

Q. Now, don't you know that is contrary to all systems of accounting throughout the United States?

A. Not for that particular period; no. That is an exceptional case.

Q. I see. Now, then, assume there is no war, and the corporation you were employed by would contribute [illegible] to the Salvation Army. How, as an accountant, would you apportion that: As operating expense or corpo-

[fol. 525] rate expense?

A. I would have to face the problem before I could answer that.

Q. Well, I can't get it for you, so I will not ask you any further. Now, then, I notice as an accountant in your report which you file with Missouri, that you apportion Federal income taxes as a part of the operating expense. Is that your understanding of accounting?

A. Yes, sir.

Q. And all Federal taxes under your system of accounting would be called an operating expense?

A. Yes, for the simple reason that if you have any earnings, it is on those earnings that you pay your tax on, so I wouldn't know where else to charge them if I didn't charge them against operation.

Q. I see. Now, then, Mr. Hendele, as an accountant, do you distinguish between the word "earnings" and "profit," or do you not?

A. Well, I guess there is a difference.

Q. I see. Now, then Mr. Hendele, as an accountant, assuming that you did $100,000 worth of business one year, and assuming that after all expenses and charges of all kinds were made, you had $10,000 left, from your $100,000 worth of business net. As an accountant, you would figure a 10 per cent profit?

A. Yes.

Q. Now, then, if your company was capitalized for $200,000; assume your $10,000 profit; what earnings would you apportion that the company had earned?

A. Well, I think you are asking two questions there and [fol. 526] trying to get one answer on it. I think that is impossible. You first determine what your profit is on your sales.

Q. That's right.

A. On income.

Q. I thought you told me it was 10 per cent?

A. Yes.

Q. Now, then, suppose that your corporation was a $200,000 corporation; how much did it earn on that profit of 10 per cent on sales?

A. Well, for the purpose of that answer to that question, I would say 5 per cent.

Q. That is your distinction between the profit and earning, is it not, Mr. Hendele?

A. Not exactly. Your earning might be your receipts less disbursements, in one sense.

Q. Then what would your profits be?

A. Well, you might have to set up reserves on such things before you can determine your actual profits.

Q. So there is a well recognized distinction in your school of accounting between profits and earnings?

A. There is.

Q. Yes, sir. Now, Mr. Hendele, I notice in the reports which you have filed, you speak of premiums earned. Is there a distinction between premiums earned and premiums received?

A. Why, yes.

Q. Is there a distinction between premiums written and premiums earned?

A. Yes, sir.

Q. And a distinction, I take it, between premiums earned and premiums paid?

A. Yes. They all mean something different.

[fol. 527] Q. Now, have you a record in your Chicago office of the premiums which your company received in cash for the year 1917 from policy holders in Missouri?

A. No, for the reason that we do not deal with policy holders. We deal with agents, and as such, we are interested only in the balances or the premiums written, less the commissions that the agent is entitled to; and consequently, we deal, in dealing with agents, with the balance due from them.

Q. Then have you a record in your office and under your control showing the amount of money received from Missouri from agents for the year 1917?

A. Not in one total. It can be determined.

Q. Well, have you determined it?

A. No, sir.

Q. You can determine from the records in your office the amount of money received from premiums in Missouri for the years, 1917, 1918, 1919, 1920 and 1921, can you?

A. I would say that it is possible; it is quite a task to do it.

Q. Well, have you the records in your office that you could do it?

A. Yes, sir.

Q. Have you been called upon to do it?

A. No, sir; never enters into our work.

Q. Sometime during the hearing of this case, I wish you would prepare and submit for the purposes of this hearing, the amount of money received from Missouri in the form of premiums for 1917, 1918, 1919, 1920 and 1921, if you will?

A. All right.

Q. Now, then, I notice you speak of losses incurred. Is there a difference between losses incurred and losses paid?

A. Yes, sir.

[fol. 528] Q. Your figures are based on losses incurred?

A. Yes, sir.

Q. Have you a record in your Chicago office showing the amount of losses paid in Missouri for 1917, 1918, 1919, 1920 and 1921?

A. Not that I can put my fingers on them just now. The paid figures are accumulated and used in the current year for annual statement and other purposes, and after that, they are not kept for any special reference because they have served their purpose, because we deal with incurred losses.

Q. You haven't a record, then, of each year of your paid losses?

A. Well, I probably have for that period, that is, they should be accumulated.

Q. Would you have any objection to getting those for us?

A. No.

Q. Now, then, I notice that you deal in your report here with expenses paid during this period?

A. Well, I must show the paid in order to produce my incurred.

Q. But your testimony was based upon expenses paid in Missouri.

A. The basis to produce the incurred, yes.

Q. Well, I perhaps didn't understand you. In your testimony just a little bit ago, were you testifying as to losses paid in Missouri or losses incurred in Missouri—I mean, expenses paid or expenses incurred, which?

A. Well, I testified to the paid and also the outstanding expenses, both of which go to produce the incurred.

[fol. 529] Q. So that as far as expenses go, you testified then to both paid and incurred expenses?

A. Yes, sir.

Q. Now, would it have been any more trouble for you to have testified as to both the paid and incurred losses?

Mr. Hogsett: If the court please, he did that very thing.

The Witness: I testified to both; paid and outstanding losses, from which you produce the incurred.

Mr. Barker:

Q. Yes, but didn't you testify as to the amount of paid and incurred losses during this 5-year period?

A. Not in just that many words.

Q. That's what I thought?

Mr. Hogsett: There is an exhibit here, Mr. Barker, that shows that.

Mr. Barker:

Q. You called it outstanding losses instead of incurred losses?

A. No.

Q. What is the difference?

A. Well, the outstanding losses are those claims that have been unsettled at the end of a year, the estimated figures on which and the only known figures at that time are included in your losses, thereby producing the incurred. The following year, however, when the losses are adjusted and paid, if it was estimated at $1,000 and only paid $900, the incurred losses that year would be reduced to the extent of $100. That example, I think, will serve to explain it.

Q. Now, then, when you get an estimate or reported loss, you carry it on your books primarily in that fashion, I believe?

A. Yes, sir.

[fol. 530] Q. Then in carrying that on your books, outside of the report which you receive from your agent, what do you call that book?

A. They are carried in our loss book.

Q. What is that?

A. They are carried in our loss book; loss record.

Q. Is that a big ledger?

A. It is quite a large book in our office. It probably

measures 2 feet one way by 3 feet the other way, and probably 6 inches thick or more.

Q. And are those entries made with ink, typewriter, or how?

A. Made with pen and ink. That is, so far as the other data—that is, the policy number, and the insured, and the class, etc., refers to the loss; but the amount of the estimate is inserted in pencil.

Q. Now, then, when the loss is finally settled, the pencil figures are erased?

A. Yes, sir.

Q. And the real payment inserted in pen and ink?

A. Yes, sir.

Q. Now, then, in reporting to a state like Missouri as to your incurred losses, you report the first figure which you have put there in pencil—if it has not been paid by the first of the year?

A. Yes, sir.

Q. So that if you report to Missouri in December an incurred loss of $5,000, and later on in the next year you pay $2,000, how is Missouri advised as to that final payment?

A. They are not advised of the final payment any more than they are in the case of any loss that is paid. How- [fol. 531] ever, in reporting the incurred losses in the annual statement the following year, that $3,000 credit is taken into consideration, and the losses are $3,000 less than they would have been had it not been for that credit.

Q. And if, at the end of the year, in starting a new year, a rate-making body in passing upon the figures for the years previous and considering this for the purpose of making the rate, they would naturally consider your incurred losses rather than your paid losses?

A. Yes, incurred losses are the basis in all calculations.

Q. I see. So that in that instance, if the rate-making body took your figures at $5,000 loss on that item in December, and the fact that you later paid only $2,000, Missouri would be charged with $3,000 which was unjust?

A. I would not say "unjust" for this reason: That you may have had some credit from the previous year, and it may have been an offset during that year; if you are going to handle paid or incurred.

Q. May have offset?

A. Yes.

Q. Unless it did offset, Missouri would get the worst of it to that extent?

A. I don't know how else you would make the calculations, though.

Q. Well, but my conclusion is right, is it—as an accountant, I am asking you?

A. Yes, but I would like to explain there that by referring to the annual statement blank on page 5, we are forced to set up as liability all losses incurred, and furthermore a reserve on those losses not yet reported on December 31.

Q. Now, then, do you carry——

[fol. 532] The Referee (interrupting): Just a moment. How do you arrive at the amount of this unreported loss?

A. Well, in our case, our records are held open until about the 10th of January in order to get in the office record any losses incurred prior to December 31, and reported subsequent to January 1.

The Referee: Q. Then your report on those losses is the sum of the items so reported as lost—up to the 31st of December?

A. I don't quite get you.

The Referee: Q. You don't make an estimate of those losses?

A. No, sir.

The Referee: Q. You turn in the actual figures reported to you?

A. Yes.

The Referee: Q. As the amount assumed to have been lost—the estimated amount?

A. Yes, sir. That is a requirement of the annual statement.

The Referee: That is all.

Mr. Barker:

Q. Now, then, you collect your premiums for fire insurance one, three and five years in advance sometimes, Mr. Hendele?

A. Yes, sir.

Q. Your company in some instances does a credit business whereby policies are not paid for at the time of their delivery?

A. A customary 30 or 45 days is allowed in which to collect the premiums.

Q. Now, then, assuming that a man takes a policy for 45 or 60 days, and at the end of that time, for some reason he does not want it, and returns it. Does that frequently happen?

A. Yes, there are different reasons for having them returned.

[fol. 533] Q. Does he pay for that length of time which you have served him?

A. If we can prove that he has had actual protection, and that he has had no other insurance, yes, we can.

Q. Have you any records in your office here in Chicago where people have returned their policy within 60 or 90 days and paid for that length of time?

A. I have seen those cases and handled them myself, but whether I can put my fingers on them right now is a different matter.

Q. Is that a frequent thing: That they pay for that length of time of service, or isn't it rather that they don't pay at all?

A. I would say that when they don't pay at all, is because they have had other insurance. The agent might issue a policy without an order, and that policy may be returned because the assured took out insurance elsewhere.

Q. If that happened at the end of 60 days, the man would have been carried by your company for 60 days without any payments?

A. Yes.

Q. If a loss occurred during that time, would your company have been obligated for it?

Mr. Hogsett: Object to that as calling for a legal opinion.

Mr. Barker: I don't want his legal opinion, but his practice as an accountant.

Mr. Barker:

Q. What is your practice in those cases, if you have had such practice?

The Referee: You may state what the practice of your company is on that matter.

[fol. 534] A. Depending upon the reasons for the policy being cancelled at the date.

Mr. Barker:

Q. Now, if the agent writes the policy then—renews it and sends it over to the man before he pays for it, and the loss occurs, what is your custom with reference to paying the loss—before you have received the premium? Does that happen or does it not, with your company?

A. I expect it does happen.

Q. Do you know whether it does or not?

A. I don't know.

Q. Do you ever hear of it happening with your company?

A. No, I have not.

Q. Have not. You don't know what your custom would be or has been with regard to those matters, because you have never had them called to your attention?

A. I don't know that the question has ever came up in the case of our company.

Q. Now, then, you have agents in Missouri that solicit business for your company?

A. Yes.

Q. And you pay those agents what is in the nature of a commission?

A. Yes.

Q. Is that a uniform commission throughout Missouri with your company?

A. Well, I think we have two different rates; two different schedules, I might say.

Q. What are the two schedules in amount?

A. One is 15, 20 and 25; and then the other is 5 per cent above that.

Q. Who gets the 15—what class of agents?

A. Well, 15, 20 and 25 is paid to a certain class of agents, and the rates vary depending upon the class of business.

[fol. 535] Q. Now, then, is there a distinction between payments in different localities in the state?

A. Yes.

Q. That is between St. Louis and the rest of the state?

A. Yes, sir.

Q. What advanced commissions over the rest of the state, if any, are paid in the City of St. Louis?

A. Just 5 per cent above the scale outside of St. Louis.

Q. Now, in addition to the 5 per cent, do they get a supervising commission?

A. No, sir.

Q. No supervising commission?

A. No, sir.

Q. During this 5-year period, did your company ever pay in addition to the 5 per cent, a supervisory commission in St. Louis?

A. No, because we have got a special agent in St. Louis that really handles our business.

Q. Now, what commission does the special agent get other than the 5 per cent?

A. He doesn't get any commission. He is a salaried man.

Q. Do you recognize in the City of St. Louis a contingent commission in addition to the 5 per cent?

A. Yes.

Q. Explain to the referee, what that contingent commission is.

A. That is simply a matter of the payment of 5 per cent on the profits of the business he gives to us. It deducts from the premiums written or expenses reported in his account, the overhead and incurred losses; really, a negligible figure.

Q. So that those agents receive, then, 10 per cent more than the ordinary commission?

A. No, you couldn't figure it that way, because the contingent might not average ½ of 1 per cent.

[fol. 536] Q. But you have stated 5 per cent?

A. On profits; big distinction.

Q. On what?

A. On the business given to us by those agents.

Q. That is, if he gives you $100 worth of business, he receives his 5 per cent extra commission in St. Louis, and a profit on the $100?

A. Yes, but there may be very little left of the $100 by the time he gets the contingent.

Q. Or if it was $200,000, he would receive his profit on that?

A. Yes.

The Referee: Q. Now, that is $200,000 net after deducting what from the total amount of the business done?

A. I understood him to be speaking of premiums and I am making a deduction of expenses and the overhead and incurred losses.

The Referee: Q. Including the agents commissions?
A. Yes, sir.
The Referee: Q. The regular commission?
A. Oh, yes.

The Referee: That is all.

Mr. Barker, resuming examination:

Q. Now, then, in the report which you filed—I haven't the exhibit number—in your statement of earned premiums, incurred losses and incurred expenses in Missouri for the five years, showing what you call your profit or your loss——

Mr. Folonie (interrupting): Exhibit No. 24.

Mr. Barker, continuing question:

Q. I would like to call your attention to that. Have you a copy of it before you?
A. I have.
[fol. 537] Q. Now, in 1917, your incurred expenses in Missouri were 45.7 per cent?
A. Yes, sir.
Q. What were your paid expenses in Missouri that year?
A. $140,629.
Q. So you charge us with incurred expenses of $142,961?
A. Yes, because we have had a reserve there for the difference; for taxes, which will explain that.
Q. So that your paid expenses in Missouri were less than your incurred expenses?
A. Yes.

Mr. Folonie: 1917?
Mr. Barker: Yes.

Q. Now, take your incurred expenses for 1918; 39.3 per cent; what were your paid expenses in Missouri for that year?
A. $141,553.
Q. And your incurred expenses as charged against Missouri is $147,000?

A. Yes.

Q. We got $6,000 the worth of it on that item—we do, do we?

A. Yes.

Q. And you think that is a fair method of accounting, do you?

A. Absolutely.

Q. Now, then, in 1919, your incurred expenses were 62 per cent?

A. Yes, sir.

Q. Does that mean that it cost you 62 cents out of every dollar received to do business in Missouri?

Mr. Folonie: Object to the amount received, because it is computed on his earned premiums and not the premiums received or premiums written.

The Referee: The witness can explain how it is computed. Overruled.

[fol. 538] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Not on premiums received: no, sir. It is on earned premiums.

Mr. Barker:

Q. Then it seems that out of every dollar earned in Missouri in premiums that year, it cost you $62 to do business—out of every $100?

A. Yes, sir; that is the high point, I think.

Q. Now, have you any explanation which you can make to the referee as to the reason for your expenses running through that period of practically $45 out of every $100 earned for the doing of business?

A. Referring to 1919?

Q. The 5-year period.

A. The 5-year period?

Q. 47 per cent?

A. Yes.

Mr. Folonie: 47.9 per cent.

Mr. Barker: Yes.

Mr. Barker:

Q. Practically, your incurred expenses for the five years were practically $48 out of every $100 received?

A. Not out of every $100 received. Every $100 earned; yes, sir.

Q. Out of every $100 earned?

A. Yes, sir.

Q. Now, as an accountant, and a man familiar with the affairs of business, what do you say as to that being an abnormal and unusual and profligate waste of funds to carry on a business in a state, which takes $49 out of every $100 earned during that period—out of every $100 earned—is that profligate and wasteful or not?

A. I would not consider it such.

[fol. 539] Q. Insurance is simply the selling of a contract, isn't it?

A. In theory, yes.

Q. And for handling the contract or selling an ordinary contract, it costs you substantially $48 out of every $100 earned to deliver that contract?

A. Yes, considering everything else we have had to do with it.

Q. Now, then, during the 5-year period, your incurred expenses were 47.9, were they?

A. Yes, sir.

Q. During that same 5-year period, what were your paid expenses?

A. I can't answer that offhand because I haven't made the calculation.

Q. It would be less or more—can you tell me that?

Mr. Folonie: He can do it in a few minutes, general, if you want him to.

Mr. Barker: Well, if he can, just give me an idea—or he can figure it to suit himself.

A. On this basis, probably, the expenses are a small percentage higher than they would be on the paid, because I see incurred expenses here, owing to the increased volume of business written, the amount reserved for taxes will account for that small percentage.

Q. Now, then, in figuring premiums earned, in starting out at the period of January 1, 1917, what do you do with

the insurance written prior to that period with reference to charging against the first year or 1917?

A. Well, you include the unearned premium.

Q. You add the unearned premium?

A. Yes, to your business written for the year 1917, and deduct from your unearned premium reserve at the end of 1917; the difference producing your earned premiums.

[fol. 540] Q. Yes, sir. Now, then, on an ascending scale of business there is more to deduct at the end than there is to add at the beginning, of course?

A. Naturally so.

Q. And your business during this five years was on an ascending scale?

A. I think it was.

Q. What is that?

A. I think it was.

Q. Now, whatever may have caused that, the effect of your accounting is that your companies get the best of the method of figuring, and Missouri gets the worst of it, as it happens?

A. As it happens. That is not the reason I made the calculation.

Q. I realize that. I know you wouldn't do that for any such purpose, but the result is as I have stated, is it not?

A. Yes.

Q. And that would be true as to your method of figuring expenses incurred?

A. Yes.

The Referee: Your losses don't enter into your calculation of expenses at all, I take it?

A. They don't affect expenses, no.

Mr. Barker:

Q. And, of course, in figuring on the same scale of business, and using the same method of calculation, incurred losses at both times, it would figure just the same way?

A. It would if your losses were greater, yes.

Q. And on an ascending scale, they usually are?

A. Yes.

Q. Now, you prepared the underwriting report for the year 1917, Mr. Hendele?

A. Yes.

[fol. 541] Q. Now, there is called for in that report the interest earned on unearned premiums on Missouri business?

A. Yes.

Q. Now, then, when you receive this money in advance, you call it unearned premiums because it has not been earned until the insurance is carried through your contract?

A. Yes, sir.

Q. Now, then, do you maintain an unearned premium insurance reserve with that money or not? As an accountant, do you do that?

A. That is simply a book calculation.

Q. Yes, and as an accountant, you maintain an unearned premium reserve of that money received?

A. Well, that is a matter that our home office attends to. That is really beyond my jurisdiction.

Q. I see. Then is there any difference between unearned premiums and unearned premium reserve?

A. In a practical sense, I can answer "no."

Q. Now, then you are called for here, also, in this 1917 underwriting report, "Interest earned on capital stock, and surplus pro rata for Missouri."

A. Yes.

Q. Now, have you had occasion in these calculations which you have made to pro-rate your capital to Missouri in proportion to the volume of business produced by Missouri as compared to the United States?

A. I have not done that. I probably should have qualified my answer when you asked me if I prepared that statement. I prepared it with the exception of the interest earnings, which is a sum that the home office furnishes us.

[fol. 542] Q. Now, during the year 1917, you were called upon by Missouri in this report which you furnished to the state, to take the commissions paid agents, as follows:

A. Amount at 15 per cent.

B. Amount at 20 per cent.

C. Amount at 25 per cent.

D. Amount over 25 per cent.

Now, I observe that you listed some commissions which you paid over 25 per cent?

A. Yes.

Q. Now, how much over 25 per cent, if you know, were those payments?

A. Well, the maximum commission paid is 30 per cent.

Q. 30 per cent?

A. Yes, sir.

Q. Now, Mr. Hendele, as an accountant, are you familiar with the method of doing business of other companies situated somewhat similar to fire insurance companies? To take, for instance, life insurance companies. As an accountant, and a man of learning and study of these questions, you know how that business is conducted also, do you not?

A. No, I do not.

Q. You have never had occasion to investigate to find out the method of paying commissions for the writing of life insurance, I take it?

A. No, sir.

Q. Now, take mortgage loan companies that loan money on real estate securities: Have you had occasion to investigate in your reading or your course of study, or your system of accounting, the method and commissions paid in that business?

A. No, I have not.

[fol. 543] Q. Have not. Now, take for instance, mutual fire insurance companies, have you had occasion to make any study of the amount of commissions paid and the expenses of operation of mutual fire insurance companies?

A. No, sir.

Q. You have not studied that?

A. No, sir.

Q. As an accountant and a business man, do you tell the referee that you have a maximum commission of 30 per cent, and that to make it is a reasonable and fair payment for the delivery of an insurance policy, and that is not a wasteful and a profligate loss of company's funds?

A. I don't think it is unreasonable.

Q. Now, your agent that writes your insurance business: Just take as an illustration, the town of Moberly, town of Springfield, or Carrollton, or any other town in Missouri. You furnish him the blanks and the forms which he uses?

A. Yes.

Q. And that is charged proportionately to Missouri?

A. Yes.

Q. Now, then, when he delivers a policy of insurance, does he write and deliver the policy there?

A. Yes, sir.

Q. Then if that is written for one year, at the expiration of that time, if the man wishes to renew his insurance, is another policy issued to him that year?

A. Yes, sir.

Q. The old policy is out of use?

A. Yes, sir.

Q. And for that service, he receives this commission—the agent?

A. Yes, sir.

[fol. 544] Q. Now, what if anything, does that agent have to do with the inspection of property which he delivers the policy of insurance for?

A. I really can't discuss the inspection of risks, because that does not come under the jurisdiction of the accounting department.

Q. Well, you know that he doesn't go and personally make an inspection of it, don't you?

A. I assume that he views the property—my own view of it.

Q. That he views the property. Now, do you know what the Sanford maps are in insurance circles?

A. Yes.

Q. What are the Sanford maps?

A. They are a map which shows by different color schemes and codes the properties at various locations.

Q. So that your company, as an illustration, has a map by blocks showing each piece of property in each block throughout the State of Missouri?

A. Yes, sir.

Q. That is kept at your Chicago office and your home office, wherever it may be?

A. No, it is kept in our Chicago office.

Q. Well, the home office has the same map?

A. Probably has.

Q. Now, then, if you have in Block 1 in the town of Moberly, as an illustration, a certain number of risks in that block, you can turn to your Sanford map Chicago in a second, and tell the number of risks, can't you, in that block?

A. We can.

Q. And your home office can do the same thing?

A. I don't know that they can.

[fol. 545] Q. Don't you know that they keep that same system?

A. Well, I don't see why they would duplicate the work when we are doing it here. I don't believe they do.

Q. Now, then on the Sanford map, there is a statement as to the kind of property on each block, say Block 1, and that would show whether it was a 2-story or 5-story building, whether it was a frame building or brick building, whether shingle roof or tile roof, etc., wouldn't it?

A. Yes.

Q. So that you have in front of you that information?

A. Yes.

Q. Now, your agent in that town has a book containing that same information?

A. I don't know that he has, he must have something, though.

Q. Well, you are familiar with the small book showing by lot and block, which the agent uses in writing insurance?

A. Yes.

Q. Now, where does your company get these Sanford maps?

A. Have to buy them, I guess.

Q. From whom?

A. Sanford Map Company.

Q. Now, at the time that map was made, an inspection of that property was made by the map makers?

A. Yes.

Q. In case there is a change on Lot 1 in Block 1 in Moberly, and a frame building is removed and a stone building is erected, that is noted by your company on that map, is it not?

A. I expect that correction would follow in due time.

[fol. 546] Q. So that you keep up-to-date as to the kind of property on there and the number of risks which you have in that block?

A. Yes.

Q. And if you get too many risks in that block and think it might be hazardous, you have the opportunity and privilege of reinsuring some of it?

A. Yes.

Q. Now, then, is there on the Sanford map a statement as to the estimated value of that property for your guidance and information?

A. Not that I know of.

Q. Well, you know there is not, don't you?

A. I never seen any.

Q. Yes, sir. It is not there, is it?

A. No.

Q. Now, then, a very trifling expense at the time that property is viewed and platted and mapped, would place a valuation on it, would it not?

A. That wouldn't mean anything, though.

Q. Well, I realize that, but a very trifling expense would do it, would it not?

A. What object would be gained though?

Q. Well, I realized that. But a very trifling expense at that time, when that property was viewed, would show the estimated value of the property, would it not?

A. It would at that particular moment, but would mean nothing.

Q. Because it might in value?

A. Might change the next day.

Q. Now, then, if it changed the next day, and the building is torn down or a building is razed, or a story added, [fol. 547] you get that information immediately, don't you?

A. I couldn't say just when we get that information.

Q. You keep right up-to-date with it?

A. It comes through promptly, I would say.

Q. So that if any change came about in values, you could get it the same way?

A. Yes.

Q. Now, then, you know that none of your property, real estate insurance is valued by anyone before you write a policy, don't you?

A. I don't know that.

Q. Have you ever seen a valuation in your system of accounting in you office as to property written?

A. That would not come under the jurisdiction of the accounting department, because we deal only with premiums received and don't see anything about the valuation of property.

Q. Have you ever heard of a method or custom of your company, or by your company, of valuing property before insurance is written?

A. I have always understood that all risks are inspected before the business is written. Surely there must be some value established.

Q. Yes. Then the statement that it would be too expensive to inspect property for values before it is written, is wrong, isn't it? It would not be too expensive, because it is done' isn't it?

A. Why, certainly, it must be done in a general way.

Q. Yes, sir. So that you tell the referee that before insurance is written on property, it is inspected and valued?

A. The agents certainly must make some kind of a survey of the property.

[fol. 548] Q. Certainly. Then it is not too expensive a matter to do that at all, is it?

A. He is not paid anything extra for that. That is what he gets his compensation for, for writting the business.

Q. Exactly. The agent inspects all these properties and values them before he issues the policy, and charges nothing for that except his commission?

A. He probably makes a general survey, but I expect there are other bodies that do more work—that is, a higher class of work and something an agent cannot do. However, that is outside the jurisdiction of the accounting department, to discuss just what bodies would do that.

Q. Now, you know your company has an affiliation with underwriting bodies?

A. Yes.

Q. Now, do the underwriting bodies have anything to do with the inspection of properties?

A. I couldn't tell you just what their exact duties are.

Q. You know, as an accountant, that your company pays them for some service, do you not?

A. Yes.

Q. And do you know what service you pay them for?

A. I don't know exactly the nature of their services; no, sir.

Q. Now, then, I call your attention to your 1918 underwriting report which you stated you filed with Missouri?

A. Yes, sir.

Q. Now, your report, "Interest earned on unearned premiums on Missouri business,"—you report that, do you?

A. Yes, sir.

Q. You reported, "Interest earned on capital stock and surplus pro-rata for Missouri?"

[fol. 549] A. Those figures were furnished by our home office, and I think they were supplemented by a letter at that time, if I remember correctly.

Q. It says here, "Explain below. Give method of computation. Explain by letter."

A. That is what I thought; that there was a letter that supplemented this. Yes, I have the letter, June 2, 1919.

Q. Where did you get this information as to the interest earned on capital stock—from your Chicago office or from your New York office?

A. Those figures were furnished by our home office.

Q. Those figures were furnished by your home office?

A. Yes, sir.

Q. Now, you have in this report of 1918, "net allocated expenses to Missouri for year, except home and department expenses."

A. Line 5. I forget for the moment just how line 5 is prepared—that is answering the question there.

Q. But that is apportioning expenses to Missouri is it not?

A. Yes it must be.

Q. Now, what method do you apportion expenses to Missouri?

A. By allocating the percentage that Missouri premiums bear to the company premiums; and the company total expenses as they appear in the annual statement blank.

Q. That is, if you produced $100,000 worth of business throughout the United States, and Missouri would produce $10,000, then Missouri would have produced one-tenth of your total business?

A. Yes.

[fol. 550] Q. And you charge one-tenth of your total expenses to the State of Missouri?

A. Yes, sir.

Q. Now, then, on your interest earnings, that is apportioned, I take it, the same way?

A. Well, I can probably answer that by reading a copy of

the home office letter filing that statement. It would explain that; how it was arrived at. The question "x" we have taken the ratio of total——

Mr. Folonie (interrupting): To whom was the letter addressed?

A. (Reading.) "Alfred L. Hardy, Superintendent of Insurance, Jefferson City; dated June 2, 1919; Dear Sir: Enclosed we hand you our underwriting experience by classes for Missouri for year ending December 31, 1918; and to the questions "x" and "xx" on the back of the blank, give method of computing these items.

"Question 'x'; we have taken the ratio of total unearned premium to total net premium, applying the ratio so found to Missouri net premiums, and computed the interest at 1¾ per cent.

"Question 'xx': Of our total interest received, $11,509.63 would be the proportion represented by the ratio of our Missouri premiums to our total premiums. But no part of our capital or surplus was earned, originated, or is owned in Missouri. The net result of all our years of doing business in that state being a balance against us of $146,725.56 at the end of 1918. Yours truly."

Mr. Barker:

Q. Now, who wrote that letter?
A. That was furnished by the home office.

[fol. 551] Mr. Barker: Oh, we ask that that be stricken out. I thought the witness was testifying to something he did.

The Witness: No, I told you I did not make these calculations. These figures were furnished by the home office, and I was reading a letter of enclosure.

Q. Who enclosed it?
A. The home office sent it direct from there.
Q. Do you know that?
A. The correspondence would substantiate that.

Mr. Barker: Well, I ask that be stricken out. I don't care to have something that somebody made in New York and sent to Missouri. I was asking you about your dealings with the department, Mr. Hendele.

The Witness: Well, this particular year, the department may have requested that blank to be furnished at a given time, and it was impossible to get those figures to the home office and signed and forwarded to the department in time; consequently, they were forwarded direct.

Q. That is, you assume they were filed?

Mr. Hogsett: They are right here. We have them.

Mr. Barker: All I am asking is, that the letter be stricken out because it is self-serving and because written by someone we don't know anything about, and we have no copy of it.

Mr. Hogsett: The motion comes a little late in view of the fact the witness prefaced his reading by the statement that this letter was written by the home office, and said that he would read it, and would answer counsel's ques-[fol. 552] tion by reading it, and now he makes a motion to strike it out when he should have known what it was and from whom it came.

Mr. Barker: I had not the slightest idea he was reading from a New York letter.

The Witness: I testified that way.

Mr. Barker:

Q. I told you at least five times this afternoon that I did not want any information from you about the allocation of those expenses from the home office that you didn't have anything to do with. Didn't I tell you that?

Mr. Folonie: We always get unpleasant when we stay too late, Your Honor please.

Mr. Barker:

Q. Now, did you tell me that letter was written by someone in New York before you read it?

A. Yes, I did—from Hartford.

The Referee: Yes, he did. The matter is unimportant. This witness's testimony with regard to the letter is obviously hearsay. Motion overruled.

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Barker: If you let that letter in, I will go back to the earnings from 1918 and prior to that. The letter is untrue, self-serving—let me see that letter.

(Counsel examines letter.)

Mr. Barker: I want it understood that if this letter goes in, that I have a right to disprove the statement that in all their years doing business, there is a balance against them of $146,725—what that has got to do with this case, when [fol. 553] we are computing it for the years 1917, 1918, 1919, 1920, and 1921, I don't understand.

Mr. Hogsett: We don't object to your doing that.

Mr. Barker: All right. Then just leave me with the witness, and I will disprove it now. If you insist that somebody is going to put in a letter that I never heard of, saying that they lost $146,000 in Missouri—that is purely a self-serving statement.

Mr. Barker:

Q. Now, this is your annual statement prepared in Hartford, filed with the Insurance Department for the year 1917? You are just as competent to testify as to the preparation of this as you are that letter, aren't you?

Mr. Hogsett: That is for the court.

The Witness: The only reason I read the letter was to explain to you the reason—the manner in which questions "x" and "xx" were answered.

Mr. Barker:

Q. Well, you know just as much about this statement, at least, as you do about that letter; don't you?

Mr. Leahy: We object to that question.

The Referee: He may state what he knows about the statement.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Yes, what do you know about this statement? I call your attention to page 9 of your annual statement filed with [fol. 554] the Insurance Department—1917 is the year. I call your attention now to an item, "Gain in surplus," and you say a gain of $528,263.49 that year, don't you?

Mr. Leahy: For the whole country.

A. That is the underwriting surplus and the investment earnings combined.

Mr. Barker:

Q. Yes, of your company; and that is correct, isn't it?
A. I can't verify the figure.
Q. Well, you verified that letter; you ought to have no trouble verifying this?

Mr. Leahy: We object to that manner of cross examination.

The Referee: I think that is not proper. The witness has no personal knowledge of either.

Mr. Barker: Well, with that statement, the letter may go in. I thought you were going to find us about some earnings they made forty years ago, or forty years back.

Mr. Barker:

Q. Now, how much was your surplus in 1918?

Mr. Leahy: We will admit the company was solvent during all these years.

Mr. Barker:

Q. Your gain in surplus on page 9, 1918, was $965,262.70?

Mr. Folonie: We object, if the court please, on the ground that admitting entry on this discussion contravenes the rights of the plaintiff under the Fourteenth Amendment of the Constitution of the United States, contrary to the Constitution of the State of Missouri, and that the amount of the surplus is not a proper matter for consideration, and [fol. 555] that its accretions in other portions of the United

States, even if sufficient to offset losses in Missouri, is not a proper matter of inquiry here.

Mr. Barker: I intend to follow this down to the Missouri money produced.

The Referee: Overruled and exception saved.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Now, then, in 1918, this year, how much money did you receive from the State of Missouri in the way of premiums—call it earned or paid I don't care which.

A. 1918?

Q. Yes.

A. The earned premiums were $374,225.

Q. That you took from the State of Missouri that amount of money on that year?

A. In earned premiums only.

Q. Just in earned premiums?

Mr. Barker: I believe that is all.

The Referee: We will adjourn until in the morning at 10 o'clock.

(Whereupon, an adjournment was taken until the following morning at 10 o'clock, the same being, Wednesday, the 20th day of June, 1923, at which time parties reconvened at the same place, and the following proceedings were had:)

[fol. 556] Mr. M. M. Hendelen, recalled to the stand for further examination, having been previously sworn, was examined and testified as follows:

Cross-examination continued by Mr. Barker:

Q. Now, Mr. Hendele, in reporting your losses, you do not separate your gross losses on direct business from your gross losses on assumed business, do you?

A. Referring to what statement?

Q. Your testimony on losses. Have you got your state-

ments on losses, from which you testified, and offered yesterday?

A. No, we did not, because the losses testified to were gross losses paid less salvage and reinsurance ceded.

Q. However, in reporting your premiums, did you report your gross premiums direct and your return premiums direct?

A. For the reason——

Q. (Interrupting.) Well, just answer me it you do.

A. Oh, yes.

Q. Now, if you want the reason in, go ahead.

A. So those figures can be allocated with the annual statement and the tax statement figures.

Q. Now, then, in reporting your losses, did you deduct your salvage from your direct business; and do you deduct your losses from your ceded reinsurance?

A. I don't believe I understand your question.

Q. Well, I will ask them one at a time. In making your loss report did you deduct your salvage from your direct business or from all your business?

A. Well, if there is any salvage on reinsurance assumed, [fol. 557] it would be considered on the reinsurance assumed, and also on the direct business, if there was any.

Q. Then take your report and show me where you consider your salvage on direct business, and your salvage on assumed business. I can't find it.

A. I don't believe that you can find that in the figures.

Q. Well, I asked you if you did it. Now, you can tell me "yes" or "no."

A. We do segregate it separately.

Q. All right. Then show me where you separate it in your loss reports.

Mr. Hogsett: Suppose you give it an exhibit number there.

The Witness: Exhibit No. 23.

Mr. Barker:

Q. Now, show me where you separated that, as you say you did.

A. Well, it is not separated on this report.

Q. Well, I asked you that, Mr. Hendele, and you told me it was. Now, it is not, is it?

A. All salvage is deducted in this exhibit.

Q. Well, we will start over again then. In the report, what do you call it, exhibit what?

Mr. Hogsett: He is not asking about your books, but about this tabulation.

The Witness: Yes, Exhibit 23.

Mr. Barker:

Q. In Exhibit 23, your loss statement as submitted during this hearing yesterday and which you now have in your hand, did you or did you not in that statement deduct your [fol. 558] salvage from your direct business and assumed business, or from both combined?

A. From both combined.

Q. Now, why did you not deduct your salvage from your direct business first, and then from your assumed business secondly?

A. Because I wanted to submit figures that already were reported in the annual statement blank.

Q. All right. Now, why did you not itemize the salvage on direct business and assumed business, and on admitted companies and non-admitted companies? Have you any reason for that or not?

A. Because the annual statement did not call for the segregation of it. I believe the wording is, "Gross losses paid less salvage," or "Deducting salvage." Consequently, in preparing these figures, I wanted to follow the underwriting statement form.

Q. Now, Mr. Hendele, you prepared the underwriting experience by classes report for Missouri in 1918. I want to call your attention to your figures as reported to Missouri for the year 1918, as to your underwriting experience. Will you get your papers on that?

A. Yes, sir.

Q. Now, you told Mr. Polonie that the figures as submitted in your underwriting report of 1918 were wrong which you testified to yesterday, as compared with the underwriting report. Now, what did you mean by that?

A. I didn't say it was wrong; but I will say that it differs from the figures reported in the underwriting statement, because both statements are prepared on a different basis.

[fol. 559] Q. I am confining it to the underwriting statement—not to the annual statement but as to the underwriting statement in Missouri. What difference, if any, is there in that statement with the figures which you gave yesterday?

A. The annual experience statement made no provision to include automobile business that year, or explosion, riot, civil and commotion business.

Q. Therefore, you reported to Missouri in 1918 in your underwriting report less premiums than you received to what amount?

A. I haven't made the calculations thereon, because they are on a different basis. I can explain that better by answering your question in this way: That in taking the gross direct premiums for 1918 reported on Exhibit No. 19, $435,667, deducting from that the direct return premiums on that same exhibit, $83,244, leaving a difference of $352,423; and then deducting automobile premiums, $48,075, which is on a gross net basis; and explosion, riot and civil commotion premiums of $7,868, neither of the two latter classes being called for on the underwriting experience by classes statement—will leave gross net direct premiums of $296,480, which is the figure reported on the underwriting experience by classes statement.

Q. And which deducted from $352,423, leaves $55,943 in premiums which you received in 1918, but which you did not report to the State of Missouri.

A. No, they were not; and that class of business com-[fol. 560] prising or to substantiate that total, were not called for in the underwriting statements.

Mr. Barker: Will you read the question?

(Question read by the reporter.)

Mr. Barker:

Q. Now, answer that question "yes" or "no," and then make any explanations you desire.

A. Yes. But I must qualify that with the remark that the premiums on the various classes called for on the underwriting experience by classes was reported, but we had no authority to include any premiums not called for on the blank.

The Referee: Q. In other words you reported only the premiums which were called for by the blank furnished by the state?

A. Yes, sir.

The Referee: Q. And that is your reason for not reporting these items which are excluded?

A. Yes, sir.

Mr. Barker:

Q. Now, then, that was not solely upon automobile business?

A. No, that included explosion, riot and civil commotion.

Q. Now, neither of those are considered regulated classes by Missouri—that is the non-regulated class?

A. I have never considered regulated or other classes. I simply furnish figures as called for under the different classes, as indicated on the blank.

Q. Then why, in making your report on your gross premium report, did you include an item, "All other classes," and what does "all other classes," referring to the underwriting statement, mean? I don't find that.

Mr. Folonie: He is talking about your premium statement you have got there for 1918.

[fol. 561] A. Well, following that literally, you would report all other classes of business you have received.

Mr. Folonie:

Q. Distinguishing between the regulated and non-regulated, I assume?

A. I didn't understand it that way.

Q. You take automobile and consider as an accountant in preparing your reports, that parcel post, for instance, marine and automobile insurance is within the regulated class of Missouri?

A. As I stated before, I don't distinguish between regulated and non-regulated. I simply furnish a statement of all business for the period.

Q. Well, now, did you as an accountant, consider registered mail and parcel post as a fire hazard?

A. Our company does not write that class of business, and I really have no thought on it.

Q. Well, do you consider automobile collision a fire hazard? That is a fire hazard. If a fellow has a collision, that is a fire, isn't it?

A. Yes—if it is written by us——

Q. (Interrupting.) Well, then, it is a fire, isn't it?

A. No, I don't see how you can call it a fire.

Q. Well, then it is not—one or the other?

A. No, that is automobile. I don't see how you can call it a fire.

Q. You tell me whether it is fire or not, and we will be through with it.

A. It is a collision.

Q. Is it fire or not?

A. Why, not unless fire ensues.

Q. Then if they strike and no fire ensues, what is it? Fire or not?

A. It is not fire.

[fol. 562] Q. It is not fire. Then you would not consider that in the regulated class, but rather in the collision class?

A. I don't really know whether you consider it a regulated class or not.

Q. It might be a regulated fire class?

A. Might be.

Q. Now, then on your 1919 underwriting report in Missouri will you please get that for me? Now, then, you told Mr. Folonie that you had the same condition with reference to your 1919 underwriting report in Missouri, with reference to omitted premiums as you had in 1918; is that right?

A. Yes, sir; I believe the same explanation will apply there.

Q. Now, how many omitted premiums from your underwriting report in Missouri did you have in 1919?

A. I will have to make that calculation.

(Witness makes calculation.)

Q. Just give me the total, please.

A. A difference of $198,057.

Q. And that difference means that you wrote that many more premiums, or received that much money in Missouri for the year 1919, than you reported in your underwriting report to Missouri?

A. Yes. The class of business to substantiate that total was not called for on your statement.

Q. Meaning the same explanation that you made before: That that represents automobile, explosion, war risk, riot, and civil commotion?

A. No, this year it was the automobile business only. Explosion appears on the underwriting statement for the year 1919, but did not appear for 1918.

[fol. 563] Q. So that in 1919, this total of substantially $200,000 not reported, represents exclusively automobile business in Missouri?

A. Yes, sir.

Q. Now, what kind of automobile insurance did that represent in Missouri?

A. Well, all of the automobile hazards written by a fire company.

Q. Including fire, collision, theft, and anything else?

A. Property damage; that was permissible to write then in Missouri. I couldn't say that it is right now.

Q. Then you don't know what items of automobile insurance that meant in 1919?

A. Includes fire, theft and collision, and possibly property damage.

Q. Now, I call your attention to your underwriting report in Missouri for 1920.

Mr. Folonie: That is for the year 1920?

Mr. Barker: Yes, sir.

A. Yes, sir.

Q. Now, I call your attention to some of your allocated or proportioned expenses to Missouri.

A. Yes, sir.

Q. Item No. 10, "Maps, including corrections." Total for all states, $17,247.09.

A. Yes, sir.

Q. Ratio of Missouri business to total business, $338.04?

A. Yes, sir.

Q. Now, that means that you apportioned to Missouri on that item $338.04?

A. Yes, sir.

Q. Now, then, that apportionment was made as you explained yesterday in considering the volume of business produced throughout the United States, and the volume of [fol. 564] business produced from Missouri, and pro-rated in that fashion?

A. Yes, sir.

Q. Now, then, in pro-rating that, did you charge Missouri first with its proportionate part of the expenses for maps used in Missouri?

A. No, sir.

Q. Did not?

A. No, sir.

Q. Now, then, the item $338.04 apportioned to Missouri, is that included in your item of $17,247, total for all states?

A. I don't believe I got that entire question.

Q. The amount apportioned to Missouri, is that included in the total for all states?

A. Yes, sir.

Q. So that you take your total for all states and then apportion to Missouri $338, and, therefore, Missouri pays that item twice?

A. No, they do not.

Q. Do not?

A. They do not.

Q. Now, in that year, you apportioned to Missouri Federal excess profits taxes in the sum of $6,799.48?

A. Yes, sir.

Q. And the total for all states is $346,912.80?

A. Yes, sir.

Q. Now, did Missouri have any Federal income tax direct other than the gross premium tax that year—did Missouri itself have any?

A. I couldn't say that it did.

Q. Well, can you say whether it did or did not?

A. I can't answer that question positively, because the amount allocated to Missouri is the proportionate part of the total amount paid for by the company, and is called for here.

[fol. 565] Q. Yes, but if Missouri had no Federal excess profits tax on your company which it paid direct that year, it does not appear in this report?

A. No, because it is on an allocated basis.

Q. And the result would be that if Missouri paid a Federal excess profits tax—your company, for Missouri, for a business in Missouri, then that would be in addition to the apportioned part which you allocated to Missouri?

A. No, sir; it would not.

Q. It would not. But there is no way you can tell whether or not Missouri did pay any Federal excess profits tax, your company's business, except from the total for all states?

A. That is the only way that I know of.

Q. That is the only way that you know of. Do you know what the National Fire Board is in the United States?

A. You refer to the National Board of Fire Underwriters?

Q. Yes. I guess that will do?

A. Yes.

Q. Are you familiar with their rulings, and are you bound by them—your company?

A. I wouldn't say that I am entirely familiar with all of their rulings.

Q. Do you know that they have issued a ruling that sprinkler risks, automobile, explosion, war risks, riot and civil commotion, and registered mail and parcel post are not fire hazards: Are you familiar with that ruling?

A. I haven't heard of that; no, sir.

Q. Now, did your company and did you here in your Chicago office during this 5-year period, set aside as a reserve a sum for conflagration hazard, and if so, how much?

A. I think our home office has.

[fol. 566] Q. Well, read the question to him, Mr. Blume.

(Question read by the reporter.)

Mr. Folonie: We submit the question is double.

The Referee: Yes, it might be understood to——

Mr. Barker: I will eliminate that now.

Mr. Barker:

Q. Mr. Hendele, I am not asking you now, never have asked you, and never will ask you to testify as to your personal knowledge, or anything of any kind or character, report, letter, document or otherwise, from the office in New York, which you told me repeatedly you know nothing about of a personal nature. Now, with that explanation, can you answer the question?

Mr. Folonie: Now, we object to assuming the witness said he had a home office in New York. The home office is in Hartford.

The Referee: Well, wherever it may be. Just confine your answer to your personal knowledge as to what transpired in the Chicago jurisdiction.

Mr. Folonie: The question is as to setting up a reserve for conflagration hazard.

A. I would answer that "yes."

Mr. Barker:

Q. Now, what sum have you set aside, then, during this period of five years for a conflagration hazard?

A. I haven't set aside anything.

Q. And yet you just finished saying you had—which is right?

A. I didn't understand your question that I had set aside. You asked whether my company had set aside.

[fol. 567] Q. You make a distinction, then, between yourself and your company here in Chicago?

A. Well, there are certain things, you understand, that are not handled in a department office, but they are done in the home-office, and I have certain knowledge of those things by reference to statements, etc.

Q. I see. All right, then. We will start over again, then. Now, in your Chicago office, is there a record which you know of, which shows the setting aside of any sum for conflagration hazard during this period of five years from 1917 to 1921, inclusive?

A. No.

Q. There is no setting aside then, in your office, of any conflagration hazard—any sum?

A. No.

Q. Now, Mr. Hendele, the business—fire insurance writings of your company for Missouri—are they all handled through your office here in Chicago?

A. Yes, sir.

Q. Suppose for instance, that Mr. Jones of Kansas City happens to be in Philadelphia, and while there, he wishes to insure a house in Chicago against fire in your company. Could he get that insurance from your agent in Philadelphia?

A. Only in having him—having the order for that in-

surance come through our home office, the policy being issued.

Q. The home office?

A. Yes, sir. Philadelphia agent would have to submit that order to the home office.

Q. You didn't understand me, then. I asked you if it could be written there?

A. No, sir.

Q. Could not be written there in Philadelphia at all?

A. No, sir.

[fol. 568] Q. Then a man in New York who had property in Missouri could not get insurance in New York on his property in Missouri, from your company?

A. He couldn't have the policy issued at New York, but an order could be transferred to the Chicago office, and the policy issued here.

Q. Now, we first started with Philadelphia. You said there the policy would be issued from the home office, and in New York, you say it would be issued from the Chicago office. Why the difference?

A. You misunderstood my answer. I said the Philadelphia agent would submit the order to the home office, who in turn would submit the order to the Chicago office, and the policy issued here.

Q. Then, any insurance written at your home office on Missouri business would be reported and be found in your books in Chicago?

A. No, sir; the business—policies would not be issued by the home office.

Q. Just an order made for them. Now, for instance, take on such as, for instance, stations on the Santa Fe Railroad Company. Could the Santa Fe Company have all of its stations in Missouri, if it desired, insured by your company in New York?

Mr. Folonie: I don't think you mean to be misleading, General, but whether they could be insured there, might be misleading, the witness distinguishing between where insurance is placed and where it is written.

The Referee: Where is the home office of this company?

The Witness: Hartford, Connecticut.

Mr. Barker:

[fol. 569] Q. Has an agency in New York?

A. Yes, sir.

Q. Could the Santa Fe secure insurance on its stations in Missouri at your New York office?

A. No, sir.

Q. Could not. Could it secure, however, insurance at your home office in Hartford?

A. Where is the property to be insured, you say?

Q. In Missouri Santa Fe stations all along the line.

A. Only through having the order come through the Chicago office.

Q. Then on every bit of insurance issued against Missouri property of all kinds and character, you would have a record of that in your office in Chicago?

A. Yes, sir.

Q. No matter where it may have been applied for?

A. Yes, sir.

Q. Is that a frequent happening, of citizens living in Hartford, New York, Philadelphia, and owning property in Missouri, and applying for insurance that way?

A. I don't recall—I wouldn't call it frequent. I would call it occasional.

Q. You have observed it on your books, have you?

A. Yes, sir.

Q. In large lines like I mention, say, for instance, the Standard Oil Filling Stations throughout Missouri, Kresge stores throughout Missouri, stations along the railroad of Missouri—have you observed that?

A. I don't remember anything of any importance; of any size.

[fol. 570] Q. Not any chain store insurance?

A. No, sir.

Q. Now, Mr. Hendele, as an accountant, when you figure as an accountant, a dividend to stockholders, you apportion that as a loss, or do you not?

A. I don't make the calculation of dividends.

Q. Well, but I am asking you from your knowledge as an accountant. Assuming now, that a company distributes a dividend, say, of $1,000. Nwo, as an accountant, on the proper method of accounting, that distribution is figured as a loss, is it not?

A. There is two ways of looking at that.

Q. Well, tell me both of them, then.

A. But if distributing a dividend, naturally, when the charge is made to the profit and loss account, it must be considered probably a loss.

Q. All right.

A. But, on the other hand, you might say it is an investment, because if the company can't pay dividends, certainly you can't attract capital to your business.

Q. But with all due respect to your answer, I think by your first answer; you mean this: That in distributing a dividend on your profit and loss sheet, it is naturally marked a loss?

A. The bookkeeping entry, yes.

Q. Bookkeeping loss.

The Referee:

Q. In other words, it represents so much capital withdrawn from the business of the company?

A. Yes.

Mr. Barker:

Q. Well, now, it is not capital withdrawn?

A. It is cash. It is assets or surplus, or whatever you call it.

[fol. 571] Q. You wouldn't say it was capital withdrawn?

A. No. Capital withdrawn, you have to relinquish your stock.

Q. Sure. Now, do you think that is the proper method of accounting, when a dividend is distributed, to mark it as a loss?

A. Well, it is part of your corporate expense, if you call it that.

Q. Well, I am just asking you if you consider that it is a loss?

A. Well, probably you can term it that. As I say, it is a bookkeeping loss.

Q. Now, then, Mr. Hendele, as an accountant, you told me yesterday that there was a well-recognized difference between profits and earnings—and there is, isn't there?

A. I said you can make a distinction between them.

Q. And you do, don't you?

A. I don't have occasion to do it in my business.

Q. But as an accountant, you know there is?

A. I think there is.

Q. Yes, sir. Now, then, profits ordinarily represent the difference between the amount received and all the expenses, payments of all kinds paid, does it not?

A. After you set up reserve for other obligations.

Q. Considering reserve, depreciation and everything else, then the balance left is a profit?

A. Yes.

Q. Now, then, has your company any property in the way of investments in Missouri—do you own any property in Missouri?

A. I don't know that we have.

Q. I see. You have no invested capital in Missouri I take it?

A. I understand we have not.

[fol. 572] Q. Now, then, in figuring earnings, is it not a universal system of accounting that invariably it must be figured either against the capital invested or the capital stock of a corporation?

A. No.

Q. How can you figure earnings except upon the amount invested or the capital stock?

A. You don't figure earnings that way.

Q. Well, how can you figure earnings any other way?

A. You figure earnings on your sales or premium income, less your expense.

Q. Well, isn't that profit instead of earnings?

A. No.

Q. You, a moment ago, told me, didn't you, that that was profit?

A. No, sir.

Q. Well, I will go back again, then. Now, the amount which represents your income, and then after the payment of all expenses, charges of all kinds, reserves, and depreciations, that amount left is the profit, is it not?

A. No, sir.

Q. What is it?

A. Call that earnings.

Q. Oh, you call that earnings?

A. Yes.

Q. Then, what is profit?

A. Profit is what is left after you set up your reserve, and after you deduct that from your earnings, for the purpose of making your distinction between the two.

Q. Yes, sir. Then, if your company receives $100,000 in Missouri for that year, after the payment of all expenses and charges of all kinds, surplus, depreciation, and everything else, it has $10,000 left, now what do you call that? Profit or earnings?

A. You can call that your earnings for the year.

[fol. 573] Q. Yes, you "can." You might call it the fourth of July. I am asking you, what do you call it?

A. Well, I am trying to make a distinction here between earnings and profits, for you——

Q. All right, I will ask you again.

A. (Continuing.) —in order to clarify this thing.

Q. Then, what do you call it?

A. Well, it is simply the difference that is left after you charge up your expenses paid against your income.

Q. Yes. And you call it now, "what is left"?

A. I would say I would call it the difference, or you can call it earnings, for the purpose of argument.

Q. Well, I am not wanting to argue; clear away from any idea of that kind. Now, what do you call it?

Mr. Folonie: We object to taking counsel's disclaimer.

Mr. Barker: Yes, I disclaim that.

Q. Now, what do you call it?

A. Well, I would call it earnings.

Q. Very well. Then it does not represent, then, a profit?

A. No.

Q. Very well. Now, then, let's see if we understand each other. Your company takes in $100,000 in Missouri in a given year. It pays out for all purposes, surplus, depreciation, taxes, expenses, losses, and every charge and expense of that kind and character, $90,000——

The Referee (interrupting): Including reserves?

Q. (Continuing): —reserves and everything of every kind—leaving a net balance of $10,000 on your business [fol. 574] done in Missouri that year. That is not a profit of $10,000 is it?

A. A profit after you have got all your reserves and everything charged against it.

Q. All right, we will start over again. Now, then, your company received $100,000 in Missouri in one year. It pays out for purposes, including reserves, surplus, depreciation and everything of every kind and character, $90,000. How much has it left?

A. $10,000 left.

Q. Now, then, what is that $10,000? Is it a profit or not?

A. I would call it a profit.

Q. Then it is not an earning of $10,000?

A. No, not in the distinction that we are making here.

Q. I am not asking you that.

A. All right; I will answer "no."

Q. No. Do you say "no"?

A. You asked me whether it is an earning, and I say "no."

Q. It is not. It is a profit?

A. Yes.

Q. Now, we are clear on that. Now, then, as applied to your capital stock, it being a profit now, it is an earning on your capital stock, is it not?

A. You can make the calculation that way for the purpose of dividends.

Q. Well, that is the proper way, isn't it?

A. I think it is.

Q. Well, all right. Now, take your underwriting report of 1917, please. Now, your premiums as reported to Missouri in the underwriting report for 1917, $359,482.

A. I don't find that figure.

Mr. Folonie: What year is this?

Mr. Barker: 1917. Underwriting report.

[fol. 575] The Witness: That figure does not appear upon my statement, but I can make a calculation that will produce that total.

Q. Well, then, that total is correct?

A. Yes, sir.

Q. Now, then, your other earnings for 1917 are $18,477. That's right, isn't it?

A. I don't find that figure.

Mr. Folonie: He has the blank there, Mr. Witness. He will show you.

Q. Yes, look at this. You made this out, didn't you?

A. As I said yesterday, the underwriting statements were made out by myself, except the questions referring to other earnings, those figures being furnished by the home office.

Q. Yes, sir; and you accepted them and filed them with Missouri?

A. Yes, we do.

Q. All right. Now, that shows——

Mr. Folonie (interrupting): We want the record now to show the counsel is departing from the rule he announced awhile ago that he never would ask anything about the home office.

The Referee: There is no consideration for the agreement, and that objection is overruled.

Mr. Barker:

Q. I am asking for the report which he himself has filed, and that shows $18,477; that's right, isn't it?

A. I don't recognize the central figure in there.

Q. Well, will you figure it yourself?

A. Well, but my statement does not show that, and I would like to verify that first. Those are all ink figures; [fol. 576] the copy of my report shows that the home office that has furnished figures in answer to question "x," "Interest earned on unearned premiums on Missouri business," a total of $4,371.69.

Q. That is on your report?

A. Yes, sir. It does not show, however that question "xx" was answered.

Mr. Folonie: That is other expenses.

The Witness (reading): "Interest earned on capital stock and surplus, pro rata for Missouri," and that is confirmed, I think, in their letter returning that statement to us to be filed with the Missouri department.

Mr. Barker:

Q. Very well, then. Take 1918. Get your underwriting report which you filed in 1918.

Mr. Folonie: Mr. McGee has just stated here aside, and I think you want to be fair, he states some of those pencil figures were put on by his department there.

Mr. Barker: Just the calculations. He can't find them, and I want to hurry along.

The Witness: I want that understood: That I have admitted that they were not furnished by the home office. The answer to question "xx" was confirmed by their statement to me.

Mr. Barker: I understand.

Mr. Barker:

Q. Now, take your 1918 report, premiums in Missouri $296,480. That is right?

A. Yes, sir; I verified that a few moments ago.

Q. Yes, sir. Your other earnings as reported to Missouri, $15,459. That is correct, is it?

[fol. 577] A. I don't find that on my statement. I want to look at the blank here.

Q. I wish you would try to help us along; you made them; now, see if they are right.

A. No, I didn't. They were furnished by the home office.

Q. Is that your writing?

A. No, sir.

Q. You answered to me that you filled out that form——

Mr. Leahy: Object to that.

Mr. Barker:

Q. Did you file this with Missouri?

A. I did; and I qualified my statement several times that I made up that statement with the exception of the other earnings, which figures were furnished by the home office.

Q. I understand that. No dispute about that. But these are your figures?

A. They are not my figures.

Q. Well, who wrote them? I understand they were furnished to you from your home office but you inserted them.

A. I did not. This particular report, as I explained in my testimony yesterday, was filed direct with the Missouri department, owing to a limited time in which we had to file the report.

Q. 1918?

A. Yes. And further, the method of arriving at these figures as explained according to the reference on the underwriting statement explained in our letter to Superintendent of Insurance, June 2, 1919, and with your permission I read that letter yesterday, giving you the method of arriving at those figures.

[fol. 578] Q. I am not even asking you about any of the information you are testifying about, Mr. Hendele. Now, let's see if we can't understand this. This report filed with Missouri shows interest earned on unearned premiums on Missouri business, $3,839.19?

A. Yes.

Q. Now, you accepted that from your home office as correct and accurate?

A. I have faith in what they do, but that is supplemented in their letter objecting to furnishing those figures.

Q. I understand that, and the commissioner will know that. Now, they furnished that, did they?

A. Yes, they did.

Q. Yes, and they did it under objection. The interest earned on capital stock and surplus pro-rated for Missouri was $11,590.63?

A. Yes, sir.

Q. Total is $15,459?

A. Yes, sir. That total is correct.

Mr. Leahy: Does it bear any memoranda with reference to that letter which you read yesterday?

A. Yes, sir; it is on there in pen and ink. That letter is a part of the statement.

Mr. Barker: I guess we can admit that they objected strenuously to furnishing that information. Does the referee understand they objected?

The Referee: Thoroughly.

The Referee:

Q. Mr. Hendele, do you know in whose handwriting the figures opposite the questions marked "x" and "xx" appear on this copy?

A. No, I do not.

[fol. 579] Mr. Barker:

Q. Now, this is a report filed with the department at Missouri?

A. For the year 1918; yes, sir.

Q. Now, then, on that same year, 1918, your losses were $259,024.

A. As reported on the underwriting experience by classes.

Q. That is all I am speaking of. And your expenses were $117,550?

A. Yes, sir.

Q. Now, take 1919. Premiums, $338,399, as reported to Missouri. Underwriting report $338,329?

A. Yes, sir.

Q. Other earnings, $27,374?

A. Yes, sir.

Q. Losses, $159,218?

A. Yes, sir.

Mr. Leahy: Q. Expenses, $133,721?

A. That is the revised statement that was filed that year.

Mr. Leahy: Q. You mean you filed two that year?

A. We filed two, and by the blank, they called for expenses paid in Missouri, and we furnished them with expenses on all business in Missouri, and were criticized for that, and consequently, we were asked to render a revised statement.

Mr. Barker:

Q. Your first statement of expenses was $223,142.42?

A. Yes, sir.

Q. And the commissioner objected to that, and you kindly reduced it $100,000 for him?

A. With this explanation: That following the blank, literally, we furnished what we thought was wanted; but the statement of business classes did not include the automobile business, and consequently, the statement of expenses as first rendered included expenses on automobile business.

[fol. 580] Mr. Leahy: Q. You simply removed that from the question?

A. Yes, sir; and the statement of expenses as revised is a true and correct statement.

Mr. Leahy: Q. Both true?

A. Both true and correct, on the different bases.

Mr. Barker:

Q. Now, in our first report for that year, which you have so kindly mentioned, you reported commissions paid in Missouri, $140,550.25, didn't you?

A. Yes, sir.

Q. Now, you knew that was outrageously wrong when you made the report, didn't you?

Mr. Leahy: Object to that question; not the proper way——

The Referee (interrupting): I think the objection is well taken.

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Barker:

Q. Now, in your revised report on commissions, you made that $80,194.95?

A. Yes, sir.

Q. Now, then, the method of the blank caused that, didn't it?

A. No.

Q. No. What caused that?

A. The letter from the Insurance Department.

Q. That is, you reported $140,000 paid to commissions, and they write you a letter, and then you report $80,000. What kind of a letter was it that caused that?

A. Want me to read it for you?

Q. No, sir; I just asked you what kind it was.

Mr. Leahy: Let him read it.

[fol. 581] The Witness (reading): Letter of April 27, 1920. Signed by A. L. Hardy, Superintendent, Reads: "In taking up your report of underwriting experience by classes, we note that you report $538,329 premiums, and on this amount of premiums you report an expense of $223,142.42, or an expense of 66 per cent on your Missouri business. This expense is excessive and unreasonable, and will ask

you to recheck your expense items and give us correct figures on this expense immediately.

"We note that under the item of expense, item 6, commissions, you give the amount as $140,550, which is 41 per cent commission on all of the business included in this report. We are sure there is an error in that item, and perhaps in others, also. Yours truly."

Mr. Barker:

Q. Now, the letter made the State of Missouri $60,000 did it?

Mr. Hogsett: Oh, we object to that as an improper question.

The Referee: Sustained.

Mr. Barker:

Q. Well, that letter caused you to report $60,000 less paid to agents?

Mr. Leahy: Lost to the State of Missouri $60,000 perhaps.

The Referee: The objection has been ruled on, gentlemen.

Mr. Barker: Read him the question.

(Question read by the reporter.)

A. That letter helped—helped us to understand what the Missouri Department wanted us to report on that blank, and [fol. 582] I believe that my letter of May 8, 1920, returning the corrected statements fully explains the situation.

Mr. Folonie:

Q. Have you a copy of it?

A. Yes.

Mr. Barker:

Q. Now, if you had not paid agents in Missouri $140,000, why did you report that you had?

A. We did pay that much.

Mr. Hogsett: Do you object to his reading the reply to it?

Mr. Barker: I don't want any self-serving statement from this man.

Mr. Hogsett: It is a communication in reply to this.

Mr. Barker: I am objecting to any self-serving statement. I will give him a change to explain.

The Referee: Proceed with the examination.

Mr. Barker:

Q. If you had not paid the agents $140,000 in Missouri, why did you report that you had in your underwriting report?

A. We did pay that much commissions to agents in Missouri on all Missouri business.

Q. That is all you care to say about it?

A. I can go on further and explain that after this letter from the Insurance Department, it seemed from the criticism, that we were then to report the expenses on the premiums reported on that blank, and revised figures were made on that basis. That explains the discrepancy of $60,000 in the commission letter.

Q. Your total premiums in 1919 were $338,000?

A. That is the total of the premiums on the classes called for in that underwriting statement.

[fol. 583] Q. And I thought you paid $140,000 commission?

A. No, sir; we paid $80,104.95, as reported to the Department.

Q. Now, that same year, 1919, there was omitted premiums, as you have explained of substantially $200,000?

A. Yes, sir.

Q. Now, take 1920, your underwriting report to Missouri shows $483,296 in premiums?

A. Yes, sir.

Q. Other earnings, $24,502?

A. Yes, sir.

Q. Losses, $249,684?

A. Yes, sir.

Q. Expenses, $205,782?

A. Yes, sir.

Q. Now, 1921, underwriting report; premiums paid, $744,473—premiums reported to Missouri?

A. Yes, sir.

Q. Other earnings, $37,714?

A. I will confirm that figure with the further explanation that a statement was submitted explaining those two figures. In fact, an objection was made again by the home office in furnishing them.

Q. Losses, $317,518?

A. Yes, sir.

Q. Expenses, $243,920?

A. Yes, sir.

Q. Now, we have tabulated these totals on all those items, you may add them if you desire, and see if they are correct. The totals you may assume there, but add them if you care to. Just the totals for the five years.

A. Are these the same figures I have testified to?

Q. Yes.

A. I don't remember all of them, naturally.

Q. No, but you can take my word that I just read them to you. That is the only way I had to get them. Will you [fol. 584] assume kindly, for the purpose of the examination, that those totals are right, we telling you that they are?

A. I am just finishing the last column.

(Witness completes calculation.)

The Witness: All right.

Q. Now, the totals on those five years, premiums in Missouri, $2,022,060?

Mr. Polonie: We object, if that is the total of the premiums as shown by underwriting experience by classes, on the ground that the same are not all upon the same basis, and therefore, totaling them would give a misleading and improper figure.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Other earnings, as reported to Missouri, total $123,526.

Mr. Folonie: We make our constitutional objection which we have previously stated to the court in detail.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Losses, $1,173,571. Expenses, $835,298. Those are the correct totals which I have read you?

A. They foot correctly; yes, sir.

Q. Now, then, your company is capitalized for 2 million dollars?

A. Yes, sir.

[fol. 585] Q. Now, your Missouri business, as compared to the business of the United States, if you care to figure, represents approximately 2 per cent of your total business, does it not?

A. I would say that is approximately the correct ratio.

Q. Now, if you allocated 2 per cent of your capital to Missouri on that basis, 2 million dollars—that is $40,000 allocated capital to Missouri?

Mr. Folonie: We object to taking the witness's answer on the ground that this is in contravention of the rights of the plaintiff guaranteed by the Fourteenth Amendment of the Constitution of the United States, upon the ground *that the ground* that the same — confiscatory, and the same is an improper basis of calculation, and not one warranted by the statutes of the State of Missouri; and if so construed, they are in derogation of the constitutional rights of the plaintiff.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. 2 per cent of your capital allocated to Missouri would be $40,000?

A. Yes.

Q. Now, then, your premiums total $2,022,060. Your other earnings total $123,526. And that makes a total of premiums and other earnings of $2,145,586 for this 5-year period, as reported by your company to Missouri in its underwriting report.

A. Yes, sir.

Mr. Folonie: We object to the assumption that all the premiums are earnings, if the court please, and object to [fol. 586] adding the premiums and the earnings from other sources.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. That totals $2,145,586?

A. That totals it, but I can't assume your statement that way—can't admit your statement that way, "as reported by the company," for the reason that in 1917 you show "Other earnings, $18,477," whereas the company reported only $4,000.

Q. Well, we have gone into that. I am just asking you to figure my totals for me.

A. Your totals are correct.

Mr. Leahy: We don't admit the totals.

The Referee: Your question is as to the correctness of the mathematical calculation. Is it correct or not?

The Witness: It is correct.

Mr. Barker:

Q. Now, your losses for that 5-year period total $1,173,571?

A. Yes.

Q. Your expenses total $185,298.

Mr. Folonie: According to the underwriting statements, is this?

Mr. Barker: This is all on the underwriting report as submitted to the state department of Missouri by his company.

Mr. Barker:

Q. Making a loss and expense total for that period of five years, $2,008,869?

A. That is right.

[fol. 587] Q. Now, if you deduct $2,008,869, total losses and expenses for those five years from the total premiums and other earnings of $2,145,586, it leaves a total of $136,717, does it?

A. Yes, sir.

Q. Now, that represents, taking your losses and expenses on the one side, and your premiums and other earnings on the other side, or is a profit in Missouri for those five years, of $136,717. Are those totals right?

Mr. Folonie: We object to asking the witness whether that is a profit.

The Referee: As to that, that is a conclusion. As so much of the question as relates to whether or not the calculation is correct mathematically, the witness may answer.

(To which action and ruling of the referee, the plaintiffs, by counsel then and there at the time duly excepted and still except.)

(To which action and ruling of the referee the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr Barker:

Q. Then the calculation shows $136,717 in excess premiums and other earnings for that five years over losses and expenses?

A. Yes. You call it profit. The calculation is correct.

Q. Now, won't you tell the referee if that represents, as an accountant, I mean, a profit which your company made in that state that five years of $136,717?

A. No, sir.

[fol. 588] Q. Is it an earning of $136,717?

A. Considering the calculation, which of course I cannot verify, the figures, because they are not correct; but on the calculation, I would call that an earning.

Q. An earning of your company?

A. Yes.

Q. Now, then, on an allocated capital of $40,000, 2 per cent which you made for me, this sum, $136,717 in this calculation which you call an earning, represents an earning of 68.3 per cent of your capital allocated to Missouri.

Mr. Folonie: We object to that, if the court please, upon the constitutional grounds which we have already called to the court's attention.

The Referee: Overruled.

Mr. Folonie: Preserve our exception.

(To which action and ruling of the referee, the plaintiffs, by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. That is right is it?

A. No, I don't admit that, for the reason that you are allocating capital on a 2 per cent basis, but you are taking a 5-year profit according to your figures, and basing that on the allocation for one year. I think you have an accumulated capital there of five times $40,000, or $200,000 to base that profit on—if you wish me to make the calculation that way.

Q. Very well, then. Figure it your way. $136,717 is the figure against a $200,000 capital for that five years. That would represent about what percentage of earnings?

A. About 68 per cent for the 5-year term.

[fol. 589] Q. That is just what I asked you a moment ago, wasn't it? 68.3 per cent?

A. I didn't recognize the figure.

Q. I see. So that on this calculation on this method of figuring, it represents an earning of 68.3 per cent for that 5-year period by your company in Missouri?

A. Yes, sir.

Q. Now I call your attention to the annual statement—1917, first, please. Here it is here. This is the underwriting statement submitted by your company to the department at Missouri?

A. Yes, sir.

Q. Now, 1917, will you see what your interest and rents amounted to, page 9 of your blank, annual statement submitted to the state of Missouri, $690,627?

A. Yes, sir.

Q. Now, your profit on investment as reported by your department for that year, $5,329?

Mr. Folonie: We renew our objection on constitutional grounds to all inquiries relating to investment profits, interest and rents.

Mr. Hogsett: In further amplification on that point, we would like to say now that our position is that no income from any source can be considered by the superintendent of insurance or by the court in fixing a rate of premium for underwriting risks of insurance, except such income as comes from that business only; and that to take into the calculation an income from some other field of activity over which the defendant has no control whatever, and as to which he can make no order whatever, would be, for that [fol 590] reason, to compel the company to do business under a rate that he would fix, at a loss upon underwriting operations, and for that reason and to that extent would deprive the companies of property without due process of law, and would deny to them the equal protection of the laws, in violation of the constitutional provisions referred to in the previous objection.

The Referee: The question stated by counsel in the objection is one, as the referee conceives, of the vital questions in this case. It involves certain factors which ought or ought not to be taken into consideration here, and as to whether they should or not, the parties are in sharp contrast. The testimony supporting or tending to support the theories of both parties will be admitted, and when the referee and the court comes to a final judgment in the matter, the matter will then be disposed of finally. The objection is overruled and the exception is now saved.

(To which action and ruling of the referee, the plaintiffs, by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Your profit on investment for that year, 1917, $5,327?

A. Well, you call that profit, but there is a loss. That is not what we call "net profit on investment," is it?

Q. "Profit on investments, $5,329" that year?

A. Yes.

Q. The losses on investments that year, $402,169?

A. Yes, sir.

[fol. 591] Q. Now, the investment expenses of that year, as reported to Missouri, $33,750?

A. Yes, sir.

Q. Net profit on investments, $260,037.

Mr. Folonie: To that, we renew our constitutional objection, if the court please, and add thereto, that the answer, if permitted, would permit the state of Missouri to exercise visitorial powers respecting the business of the plaintiff, which visitorial powers are lodged only in the state of its creation and not in the state of Missouri.

The Referee: The referee, assuming that counsel means not that the answer, if permitted, would endow the superintendent with that power, but that if that theory should finally be adopted, he would then be endowed—the objection is overruled.

Mr. Folonie: That is right. Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Now, the net profit on investment, 1917, $260,037?

A. Yes, sir.

Q. Page 9. I call your attention to your annual statement of 1918, as filed with the department at Missouri—investments and rents, $759,757.

Mr. Folonie: Counsel is apparently proceeding upon the same line which he has adopted as to the preceding year. May our objection stand without specific renewal as to the entire line of questions?

The Referee: Yes. Same objection and same ruling.

Mr. Barker:

Q. $759,759?

[fol. 592] Mr. Folonie: The same exception?

The Referee: A similar exception always.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. Profits on investment, $7,914?
A. Yes, sir.
Q. Losses on investment, $180,991?
A. Yes, sir.
Q. Investment expenses, $42,675?
A. Yes, sir.
Q. Net profit on investments, $544,005?
A. Yes, sir.
Q. Now, let me have 1919, please. Page 9. I call your attention to the annual statement for 1919, as filed with the Missouri department. Interest and rents $843,079?
A. Correct.
Q. Profit on investments, $5,948?
A. Yes.
Q. Losses on investments, $395,348?
A. Yes.
Q. Investment expenses, $44,930?
A. Yes.
Q. Net profit on investments, $408,749?
A. Yes, sir.
Q. For the year 1920, annual statement as reported to the state of Missouri, interest and rents, $902,333?
A. Yes, sir.
Q. Profit on investments, $36,115?
A. Yes.
Q. Losses on investments, $445,509?
A. Yes, sir.
Q. Investment expenses, $50,722?
A. Yes.
Q. Net profit on investments, $532,217?
A. Yes.
[fol. 593] Q. Now, give me the year 1921, please. Page 11. I call your attention to your annual statement for 1921 filed with the department of Missouri. Interest and rents, $1,110,988?
A. Yes.
Q. Profit on investments, $603,353?

A. Yes.
Q. Losses on investments, $417,564?
A. Yes.
Q. Investment expenses, $49,846?
A. Yes.
Q. Net profit on investments, $1,276,931?
A. Yes.
Q. Now, then, I ask you, Mr. Witness, if the earnings which are the figures we have been reading from, do not show that the earnings or profit, whatever it may be called, comes universally from interest and rents; that the losses on investments are very high?

Mr. Leahy: That is a mere conclusion.
The Referee: The figures show for themselves.

(To which action and ruling of the referee the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Barker: Very well; that is all right.

Mr. Barker:

Q. I call your attention to your annual statement as filed with the department of Missouri, 1921, at page 9 again, and call your attention to your surplus gains in 1917, $4,119,443?
A. That is not surplus gains. The increase in surplus in 1917 was only $184,000.
Q. You possibly do not understand my question, or I didn't make it clear. What was the surplus as shown by that annual statement, 1917?
A. $4,119,443.26.
[fol. 594] Q. Now, will you please get me the surplus for 1921?

Mr. Folonie: Same objection to that line of inquiry respecting this year.
The Referee: Overruled and exception saved.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Barker:

Q. What is that surplus for 1921?
A. As of December 31?
Q. Yes.
A. $6,844,481.19.
Q. Now, then, that shows a gain in the surplus from 1917 to 1921 of $2,735,038?
A. $2,725,038, I believe.
Q. $2,725,038?
A. Yes.
Q. I call your attention to your annual statement of 1917, page 3, and ask you what dividend was paid stockholders for interest or dividend for the year 1917?

Mr. Folonie: Same constitutional objection to that.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $400,000.

Mr. Barker:

Q. That is 20 per cent of the capital?
A. I guess it does figure that.
Q. Yes, sir; just figures that. I call your attention again, Mr. Witness, to the annual statement, 1918, as filed with the Missouri department, and ask you if your dividend [fol. 595] again to your stockholders for that year was also $400,000, or 20 per cent?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Barker:

Q. I call your attention to your annual statement of 1919, and ask you if the dividend paid to the stockholders of your company that year was $400,000 or 20 per cent?

Mr. Folonie: Similar objection to that.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Folonie: Exception.

Mr. Barker:

Q. I call your attention to your annual statement of 1920, as filed with the Missouri department, and ask you if the dividends paid stockholders of your company that year amounted to $400,000 or 20 per cent?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 596] A. Yes, sir.

Mr. Barker:

Q. I call your attention to your annual statement of 1921, and ask you if there were dividends paid to the stockholders of your company, as shown by your annual statement filed with the Missouri department that year of $400,000 or per cent?

Mr. Folonie: We make the same objection, in the like words and figures as previously made to the court.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Barker:

Q. Now, I call your attention to your annual statement of 1921, and ask you what your unearned premium reserve amounted to at that time?

A. $15,851,787.31.

Q. That is, your interest reserve as shown in your report of 1921 for Missouri department?

A. Unearned premium reserve; yes, sir.

Q. I call your attention to your annual statement of 1917, as filed with the Missouri department, and will ask you to tell me what your unearned premium reserve was that year?

A. $10,979,583.61.

Q. I will ask you if that shows an increase in your unearned premium reserve from 1917 to 1921 of $4,872,204?

A. It does.

Q. Now, then, Mr. Witness, you tell me that, as an accountant, that you apportion your expenses to Missouri in [fol. 597] accordance with the volume of business produced by Missouri, as compared with the United States. Is that, roughly speaking, the method?

A. Yes, sir; that is the method.

Q. Now, that includes home office expenses of all kinds?

A. Yes, sir.

Q. Salaries of employees?

A. Yes, sir.

Q. Including all the employees in the office of the different departments?

A. I think it does.

Q. Some of those employees handle the investments of your company?

A. Yes.

Q. And their salaries and expenses are apportioned to Missouri along with the other salaries?

A. They must be, because the basis for the overhead we use in our statement figures.

Q. Yes, sir.

Mr. Leahy: You don't know, though.

A. I don't know positively, no.

Mr. Barker:

Q. That is the method which your company adopts, as you understand it?

A. Yes.

Q. And postage, all forms of postage; that is apportioned to Missouri, along with other expenses?

A. Yes.

Q. The printing of all kinds that is used for investments and otherwise; that is apportioned to Missouri?

A. I don't see that there would be any printing expense in connection with investments.

Q. Suppose they wrote letters and asked people to sell securities and so on; that would be more expense, wouldn't it?

A. Yes.

[fol. 598] Q. And that would be apportioned?

A. Yes.

Mr. Barker: I think that is all.

Redirect examination by Mr. Folonie:

Q. Counsel asked you about increase in your surplus from 1917 to 1921. What part of that increase of surplus came from your Missouri business?

A. Wasn't any.

Mr. Barker: Wait a minute. We object to the witness testifying to that, unless we may ask him what his information is on the subject.

Mr. Leahy: You may re-interrogate him afterwards.

Mr. Barker: Q. Do you have any information at all as to what proportion of the money which you received from Missouri during this period was invested in securities, and what kind of securities, and what interest was secured from them?

A. I form my conclusions from the statements that I have testified to for the 5-year period, which show a loss of over $300,000 in Missouri.

Mr. Barker: Yes, but I am asking now as to whether or not you have any personal knowledge as to whether or not any of this sum of money which Mr. Folonie speaks about was earned in Missouri—increase in surplus—do you have

any information as to that, and could you have any except from the home office?

Mr. Leahy: The figures that are printed.

[fol. 599] A. I couldn't have any in that many words, but my statements show a loss of Missouri business, and there cannot be any increase in surplus on Missouri business.

Mr. Barker:

Q. You testified for me you made 63 per cent in Missouri?

A. No, I did not.

Mr. Barker: We object to this witness testifying unless he has personal knowledge of it.

The Referee: You may state Mr. Hendele, what you know of your own personal knowledge with respect to whether or not any portion of this surplus came from the state of Missouri.

(To which action and ruling of the referee the defendant by counsel, then and there at the time duly excepted and still excepts.)

A. Yes, I would say that we have not sent any money to the home office for several years; and consequently, there was nothing on Missouri business.

Mr. Folonie, resuming redirect examination:

Q. During the 5 year period we are talking about, did the home office send you any money with respect to Missouri business?

Mr. Barker: We object to this. They may probably have paid his salaries from the home office.

The Referee: Overruled.

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

A. The home office has sent us money every year.

[fol. 600] Mr. Folonie:

Q. These dividends counsel asked you about did you get any money from your Missouri business to send down to your home office for the payment of dividends?

A. No.

Q. Counsel asked you about a comparison between your paid expenses and your incurred expenses for 1917, 1918 and 1919, and did not ask you as to the years 1920 and 1921. Will you tell us how the paid expenses and the incurred expenses compared for those two years?

A. 1920 the paid expenses were $208,381; for 1920, the incurred expenses were $199,073. In 1921 the paid expenses were $244,758; and in 1921, the incurred expenses were $247,399.

Q. Inquiry was made as to the method of terminating unearned premium reserve by means of cancellation of policies. I will ask you what the effect is as to unearned premium reserve in the event that a loss is sustained, total to insurance?

A. Why, the loss will affect to reduce the unearned premium reserve.

Q. How does the happening of a loss affect the unearned premium reserve?

A. Because on the payment of a total loss, for instance, your liability is immediately terminated and you are responsible for nothing after the payment of your loss. Suppose you had a $1,000 policy and you have a loss, your liability is terminated immediately, and consequently, you are permitted to reduce the unearned premium reserve accordingly.

Q. And if you have a partial loss, say a $500 loss on a $1,000 policy, what is the effect?

[fol. 601] A. It would affect the unearned premium reserve proportionately to the extent of one half of that policy.

The Referee:

Q. In the event of a total loss, is any part of the premium paid—assuming the premiums have been paid for five years in advance, and a loss occurs at the end of the second year—then are any premiums returned to the assured?

A. No, sir.

Mr. Folonie:

Q. It is treated as entirely terminated when the loss, then, occurs; is it?

A. Yes, sir.

Q. And your premium is treated as entirely earned, and the policy entirely exhausted?

A. Yes, sir; upon the payment of any loss.

Q. You, therefore, have no further loss and no further expense and no further premiums on that particular policy?

A. No, sir.

Q. That is, with respect to a total loss, we are talking about now?

A. Yes, sir; I understood it that way.

Q. As to a partial loss, it continues to run to the end of the policy for the unexhausted part of the policy, does it?

A. Yes.

Q. And you have your earned premium and your unearned premium on that proportionate part of the whole insurance?

A. Yes, sir.

Q. Now, to illustrate the distinction counsel was seeking to make about profits and earnings: A manufacturing concern operates its business it is conducting and makes money on its sales of goods; that would then show in the profit and loss statement as a profit for the period, would it? [fol. 682] A. To make my distinction, I would call that an earning.

The Referee:

Q. A what?

A. An earning.

Mr. Folonie:

Q. Now, suppose that the company which made such an earning on the conduct of its business by selling goods, had one of its factory buildings burn down during the year and had no insurance on it to the amount—the value of the building was greater than the earnings, that they had made on the conduct of their business; what effect would that have on the profit and loss of the company for the year?

A. Well, your earning in that sense, to make that distinction clear, would really be probably a trade or operating profit, and consequently, the loss of that building would have to be charged against that earning, which would result in a loss.

Q. Well, in that case, you would have a corporate loss?

A. Yes, sir.

Q. But you would have a trade profit upon the business conducted or trade earning, whichever term you may use?

A. Yes, sir.

Q. On this 1920 underwriting by classes blank that counsel asked you about where it says, "Expenses," on the back, I note there some figures in the parenthesis before each of the numbered items there—on the back—and a notation mark, note at the bottom of it. What do those figures in parenthsis there refer to?

A. They refer to the lines on which those items appear on the annual statement blank.

[fol. 663] Q. So that so far as these expense items are concerned, there is a direction in the underwriting blank itself as to what losses of the annual statement blank the figures are designed to be used in this blank?

A. Yes.

Mr. Folonie: There has been quite a bit of discussion about this blank, if the court please, and for the elucidation of the court, while we don't offer it as having any probative force on the part of the plaintiff as proving the content of the blank but merely to further the understanding of the referee as to what the inquiries have been directed to, we offer in evidence the back of this 1920 blank, being the page entitled "Expenses," and ask that it be copied into the record. I will submit it at this time for the referee's inspection, that he may see what we have been referring to.

Mr. Barker: That is our department blank?

Mr. Folonie: The underwriting experience blank for 1920.

Mr. Barker: As furnished by whom?

Mr. Folonie: By this company.

The Referee: The blank furnished by the state of Missouri?

Mr. Folonie: Yes. I have my duplicate copy of it here; I will use this if you prefer?

Mr. Barker: That's all right. I didn't know what the paper was.

Mr. Folonie: I think I will ask the reporter to give it an exhibit number, and as the matter consists of four sheets, of which I am offering only one, I will ask him to copy [fol. 604] it into the record—copy page here entitled "Expenses."

Mr. Barker: I would like to suggest that in offering the one sheet, there are a good many instructions which are explanatory of that sheet and the other sheets. Does counsel wish to limit the introduction to the last Sheet?

Mr. Folonie: Only to the portion relating to expenses, is the extent of my offer; yes, sir.

Mr. Barker: Doesn't care to have the explanatory part of the document offered?

Mr. Folonie: If you wish it, you may do so.

Mr. Barker: We think the whole thing should be offered, but that is objected to.

Mr. Folonie: We offer only that portion of the sheet.

The Referee: I understand counsel for the plaintiff do not offer, and neither do the state offer the other pages.

Mr. Barker: No, but we are objecting to the last sheet, because the previous parts of the paper are explanatory of that, and that isolated offer is confusing and is not intelligible.

The Referee: Overruled.

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Folonie: In the light of counsel's objection, I will ask the witness one question. Is there anything relating to ex- [fol. 605] pense on this underwriting blank except on the last side or page of it?

A. No, sir.

Mr. Folonie: That is all.

(Whereupon, the document so referred to by counsel for plaintiff, on its page headed "Expenses," was by the reporter at this time duly marked "Plaintiff's exhibit 25, Blume. This side only.")

(Whereupon, the page of the document so referred to, having been previously marked "Plaintiff's Exhibit 25,

Blume," being so offered and introduced, was admitted in evidence and is, in words and figures, as follows, to-wit:)

Said exhibit is on file in this court as per stipulation.

Recross-examination by Mr. Barker:

Q. Now, Mr. Hendele, you were examined yesterday as to your expenses in Missouri from a table or a tabulation used by your counsel, Mr. Folonie, and used by you in answering; but that tabulation or document was not offered in evidence. Would you mind giving me a copy of it, if you have two of them?

A. I only have one copy; just my working figures.

Q. Well, I don't want your working figures, but are your books in Chicago available to us for an examination as to your expenses?

A. They are.

Mr. Barker: In order that you may understand my position and that counsel may understand it, it is the position of the State of Missouri that you don't comply with the [fol. 626] Missouri law when you tabulate a mass of totals and offer them without any further explanation or any division; and the State of Missouri is insisting, as far as your company is concerned, that it make a detailed statement of its expenses. Now, are you willing to do that?

The Witness: Absolutely.

Mr. Barker: Then we ask that you do it.

Mr. Folonie: I will say, if the court please—we wish to be courteous to opposing counsel—that the blank which the witness has here which is a working sheet contains some figures which he has crossed out, as well as those which he read; and that I will have a copy made of that part of it which the witness read, leaving out the scratched out part, and furnish it to counsel for his convenience at a later time. I have a copy in my possession, which I am keeping for my own records; otherwise, I would give it to counsel now; but I will furnish it to him at a later time in this hearing.

Mr. Barker:

Q. Now, Mr. Hendele, those expenses as shown in your office here in Chicago, will show each dollar, as I understand it, of expense paid in the State of Missouri, will it?

A. Yes, sir.

Q. Now, of course, the allocated expenses: They are in the home office at Hartford?

A. Yes, sir.

Q. Now, then, the money which you received from Missouri here in Chicago, if you do receive it, for premiums on insurance written in Missouri, is forwarded by your office to your home office in Hartford?

A. If any, yes, sir.

[fol. 607] Q. Well, now, then, assume that the agents make reports to you each month on your Missouri business; do they send their money to your Chicago office?

A. Yes, sir.

Q. Now, that is what you call "unearned," is it?

A. Well, that is called the agents' "balance."

Q. Well, that is unearned as far as the policy holder is concerned?

A. I guess we can call it that. Part of it would be earned during the year.

Q. Those unearned premiums, then, as fast as you receive them, do you send them to your office in Hartford?

A. No, we do not.

Q. You keep them here to take care of your losses and expenses in Missouri?

A. Yes, sir.

Q. Then you don't forward any money during the year to the home office, unless at the end of the year you have a sum in excess of what is needed to pay your expenses and losses in Missouri?

A. If a sufficient sum is accumulated over and above the required working capital, then that excess is forwarded to the home office.

Q. And the money which you receive here in your office in Chicago, do you make investments here with that money?

A. No, sir.

Q. That is not invested during the time you hold it here?

A. No, sir.

Q. And you hold it here during the entire year or until there is such a surplus as in your judgment warrants your sending it back to the home office?

A. Yes, sir.

[fol. 608] Q. What ordinarily, do you mean by "working capital"? Just the expense of your office here?

A. Expenses and losses.

Q. Expenses of your office here, and your expenses and losses in Missouri?

A. Well, the expenses of the office, and the losses paid in the office. In other words, enough money to conduct the business of the department.

Q. Now, what you hold here in the way of unearned premiums, you don't set that aside as unearned premium reserve?

A. No, sir; we do not.

Q. And in case a loss occurs in Missouri, you pay out of these unearned premiums which you hold here?

A. Paid out of the funds that we have.

Q. Which you call "unearned premiums?"

A. Well, you called it that. I admitted that we could probably call it that.

Q. Some of it would probably be earned, you think?

A. Yes.

Q. Now, then, you write a combination policy covering, for instance, automobile, theft, collision, property damage and fire; do you?

A. Yes.

Q. And then you write a combination policy on tornado, fire, windstorm and hailstorm?

A. Yes.

Q. Now, if a loss occurs on any one of those; for instance, on your automobile policy, a loss occurs by theft, you make an adjustment of that loss, but you treat all of the money received on that policy as earned and the matter closed; is that right?

A. That would be a matter that would be handled by the [fol. 659] adjuster or the loss department in adjusting the loss.

Q. But, I mean as an accountant, and they pass through your hands. When the loss occurs as you have explained to the referee, the premium then you treat as earned?

The Referee: If it is a total loss?

Mr. Barker: Yes.

A. Yes.

Q. All right. Suppose, as in the automobile case, on a combination policy, there is a total loss by theft or by fire, you treat that entire premium as earned and retain it?

A. Not on a combination policy as much as that. I was referring to the referee at the time, to a straight policy. That is what I had in mind: A policy covering one hazard.

Q. I am now asking about a combination policy.

A. We pay return premium on the other hazard.

Q. That is, if you carry on fire, and you also have tornado, hail and windstorm, and a total loss by fire occurs, you return to the policy holder that portion of the premium that represents the insurance against tornado, windstorm and hail?

A. That is the practice, unless some special arrangement is made at the time of adjustment of the loss.

Q. But from your investigation in your department, and as an accountant, you know that the universal rule on combination policies is to retain that part of the policy covering other forms of insurance—that part of the premium? [fol. 610] A. It is the universal practice—I don't say it is a universal practice. I know that we do it.

Q. I mean your company?

A. Yes, sir.

Q. You don't know what per cent, or do you know, that is returned in cases of that kind, and the per cent that is not; or is it the universal custom of your company?

A. Well, we would return the unearned portion on that particular hazard.

The Referee:

Q. In the absence of some special arrangement?

A. Yes.

Mr. Barker:

Q. Your books will show in your offices the amount of premiums returned on combination policies of that kind, will they?

A. Yes, sir.

Q. Now, then, if a policy is written by fire, no combination policy, for five years in advance, and the fire occurs within the first month, a total loss, you retain as an earned premium all of that premium so received?

A. Yes, sir.

Mr. Hogsett: Your Honor please, it is now 12:35, and we are trespassing on the noon hour.

Mr. Barker: I think we are through.

The Referee: Q. Mr. Hendele, I believe there are seventeen states within the jurisdiction of this office?

A. No, we only have fourteen.

The Referee: Q. Now, in keeping an account of receipts and disbursements, do you segregate the accounts in each of those states?

A. We do, so far as the records of agents are concerned. Then, in addition, we have a monthly record of premiums by states, both gross return reinsurance and net premiums. [fol. 611] Also, expenses under about seven general headings, so that each month we know what premiums have been written in the respective states, and what expenses have been paid, and allocate it to Missouri on the department business.

Mr. Hogsett:

Q. What about losses?

A. And we also keep a record of incurred losses by states in the same manner.

The Referee: Q. In the event there should be in a given period of time, an accumulation of funds in the Chicago office more than necessary to supply the ordinary working capital at this office, so that, as I understood your testimony, in the ordinary course of business, you would remit some part of the surplus to the home office—would that remittance be taken out of the general fund, or would that remittance be apportioned among the several states according to the amount received from the states?

A. It would be taken out of the general fund.

The Referee: Q. Then, what I have in mind, Mr. Hendele, is this: If this business conducted in the fouteen states as a whole, through a given period of time, yielded such a sum as that you would, in the ordinary course of business, remit to the home office, would your books show how much of that sum was received from a given state?

A. It would not show the exact amount received from a given state, but with our monthly record of the premiums and expenses in the different states, we could determine ap-

proximately whether or not there was a profit or loss in that state on a trade basis.

[fol. 612] The Referee: Q. In other words, if the business as a whole, were appreciable throughout the entire fourteen states—that is, if it caused an accumulation of a surplus fund here, if that surplus arose from business in some states, say ten, and yet four of the states do not produce any part of it—any profit at all, or contribute to the surplus at all, that fact would appear from your books?

A. Yes, sir.

The Referee: That is all.

Mr. Folonie: That is all.

Mr. Barker:

Q. Now, if the home office sends money to your Chicago office, as you have stated they sometimes did, do you designate in the handling of that money for what state it is to be used, or is it in the nature of a general fund to be used where needed in the fourteen states?

A. In answer to the first part of your question, I would say it is impossible—that it goes into the general fund.

Mr. Barker:

Q. Now, as I understand you, all of the sums of money which your Chicago office receives from these fourteen states in which you operate, coming in as it does from time to time as you have explained, I understand that that all remains here under the control of your Chicago office, without any investment or attempt to earn anything upon it?

A. Just the necessary working capital to conduct the business.

Q. Now, let me ask you this last question, as an accountant and in line with your testimony: Now, if for instance the net premiums for Missouri contributed 10 per cent of [fol. 613] the total net income of your company from all premiums, is it true that the result of the earnings in Missouri should be computed upon the basis of 10 per cent of the gross earnings of your company from all sources except earnings upon capital stock?

A. That is a very lengthy question.

Q. I am asking you that, simply as an accountant. I want no legal opinions; just simply the method of calculation. Will you read it to him, Mr. Blume?

(Question read by the reporter.)

Mr. Folonie: We object to assuming that the proportion of net earnings should relate to gross earnings of the company as a whole, as an entirely improper method of calculation, and leading to a misleading result.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I would say "no." I cannot make the calculation that way.

Mr. Barker:

Q. Your judgment as an accountant is, that that is an improper method of accounting?

A. Yes, sir.

Q. I asked you a moment ago, did I not, and did you not answer me that the money received from these different fourteen states which you represent, in the case of premiums, unearned premiums or earned, that come in from those states, that you receive here in your Chicago office, [fol. 614] and you make no investment of it and it earns nothing—I asked you that, didn't I, and you answered it?

A. I think you did.

Q. And you said you made no investment of it and it earned nothing?

A. Yes, sir.

Mr. Barker: That is all.

(Witness excused.)

The Referee: We will adjourn until 2:15.

(Whereupon, an adjournment was taken until 2:15 in the afternoon of the same day, being Wednesday, June 20, 1923, at which time parties reconvened and the following proceedings were had:)

Mr. George Groth, called as a witness on behalf of the plaintiffs, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name, please?

A. George Groth.

Q. By whom are you employed?

A. Employed by the Commercial Union Assurance Company, and also at the same time, with the Palatine Insurance Company, Commercial Union Fire Insurance Company of New York, and Union Assurance Society, and California Insurance Company.

Q. Where is the home office of the Commercial Union Assurance Company?

A. 114 Fifth Avenue, New York.

Q. For the United States?

A. Yes.

Q. It is a foreign company, is it?

A. Yes, sir.

[fol. 615] Q. Of what country?

A. London, England.

Q. Commercial Union Fire Insurance Company, where is its home office?

A. 114 Fifth Avenue, New York.

Q. Union Assurance Society, Ltd., where is its home office?

A. 114 Fifth Avenue, New York.

Q. Where is the home office of the Palatine Insurance Company, Ltd.?

A. 114 Fifth Avenue, New York.

Q. Where is the home office of the California Insurance Company?

A. San Francisco, California.

Q. Of the companies you have mentioned, the Commercial Union Fire Insurance Company—is it a United States or foreign Company?

A. The Commercial Union Fire Insurance Company of New York is a United States company.

Q. The Union Assurance Society, Ltd.: Is it a United States company or foreign?

A. Foreign company.

Q. What country?

A. England.

Q. The Palatine Insurance Co., Ltd.: Is it England or an American company?

A. England.

Q. California Insurance Company: Is it a United States company or foreign?

A. United States.

Q. Have you the books and records of the western department of the respective companies you have mentioned here in Chicago?

A. I have.

Q. Directing your attention first to the Commercial Union Assurance Company, Ltd., where does the company have its [fol. 616] western department—in what city?

A. Chicago.

Q. Is that where you are employed?

A. Yes, sir.

Q. How long have you been in the employ of that company?

A. Twenty-eight years.

Q. In what capacity are you employed?

A. At the present time as chief accountant.

The Referee: If you will speak a little louder, I think it will be kindly received by everybody.

The Witness: Yes.

Mr. Folonie:

Q. Are you in general charge of the books and records of the western department at Chicago?

A. Yes, sir.

Q. Will you describe the general nature of those books and accounts as relates to premiums, expenses and losses for the State of Missouri for the period 1917 to 1921?

A. The premiums are kept in registers and also on cards in our tabulating department. From these records, they are put into condensed form through state books, which shows the business as received from the various states controlled in this department.

The losses are kept somewhat similar, in registers and loss records, and also on cards in our tabulating department.

Q. What about expenses? How are they kept?

A. Prior—expenses are kept on—have been kept on a card system prior to 1920, and since then—in the period of 1917 to 1920, they were taken—the results monthly were [fol. 617] taken from those cards and condensed in book form, and we are alluding now to agency balances.

Q. Yes.

A. The expenses of the home office itself in Chicago were kept in general books, but were not punched on cards. They were such matters as the expenses coming up into the office here in Chicago, not particularly contributable to Missouri.

Q. You mean your general expenses in the nature of overhead as distinguished from expense charges through agents or field men, itself?

A. Yes. For instance, salaries, rents, and office expense in general, not particularly attributable to the State of Missouri.

Q. About how many books and records do your figures rest upon respecting premiums, losses and expenses for the years 1917 to 1921, inclusive?

A. You mean in volume—numbers?

Q. Yes, numbers, size and general description?

A. Well, I would say that it would cover about ten books.

Q. And of what general size or description are they?

A. Well, they are—the general expenses are kept in a book or books probably the size of, oh, a book 20 inches long, 6 or 5 inches deep, and about 18 inches wide; something like that. And the expenses for the years 1917 to 1920, as alluding to Missouri, are kept on punched cards filed away with the books.

Q. About how many cards do you have covering that period?

A. Oh, in order to segregate the State of Missouri out of those cards, I would say we would have to run over about 100,000 cards.

[fol. 618] Mr. Barker:

Q. Were you referring when you said to 1920, to a card system used prior to that?

Mr. Folonie:

Q. After you quit using the cards, then what kind of a record did you keep after that?

A. Well, we kept a general record showing all the commissions, postage, and exchange, etc., as pertaining to Missouri. We keep that in a journal by items.

Q. Did you keep these books in the regular course of business for the purpose of keeping a correct record of the transactions of your company in the State of Missouri for the period in question?

A. I did.

Q. And are those books, aside from errors which might unconsciously creep into records so voluminous—are they in general correct and true records?

A. They are.

Q. Have you made a computation from such books and records, Mr. Groth, respecting the premium record of your company for the years 1917 to 1921, of the Commercial Union Assurance Company, Ltd., respecting its business in the State of Missouri?

A. Yes, sir.

[fol. 619] Q. What is the amount of the incurred losses as of December 31 of the respective years mentioned, upon all business of your company?

Mr. Jacobs: One minute. Defendant objects to proof of incurred losses because it is incompetent, irrelevant and immaterial, and because it does not tend to prove or disprove any issue in this case, and because it is not a proper method of proof or calculation under the statute, the rate-making statute under which this order was made.

[fol. 620] The Referee: Overruled.

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Jacobs: Now, can it be understood, without making the objection of that kind to the question of earned premiums, incurred losses and expenses incurred, can it be understood that the defendant is objecting to that form of calculation, and that testimony—or will I be required to make the objection each time?

Mr. Hogsett: That can be understood; and let it be further understood on our side, that they are objecting to all inquiry relating to any earnings or profit or income from any other source than underwriting, on all grounds hereto-

fore asserted in any and all objections relating to that matter.

Mr. Jacobs: That is all right.

The Referee: That is all right.

Mr. Folonie: I want the privilege of making our constitutional objection from time to time, anyway, if I think proper, because they assert themselves in new forms and guises from time to time; and I want to give the court the benefit of my views as the matter seems to necessitate from time to time, with a view to having the court change his, what we think, unjust rulings on that subject at the present time. I don't want the court to be pledged, in other words, to continue in his error by any stipulation.

The Referee: If the court, as at present constituted is convinced of any one thing, it is of his retention of the [fol. 621] right to change his mind at any time; and Mr. Folonie's right to make objections on constitutional ground shall be preserved unimpaired and unhampered.

[fol. 622] Cross-examination by Mr. Jacobs:

Q. Now, I think perhaps I can generalize with this witness. There are some matters I want to ask him about before going into these particular companies before noon. [fol. 623] While I want to go into a number of other matters with him concerning these various companies. I am going to ask him now about some other matters. Now, Mr. Groth, how do spell your name, by the way?

A. G-r-o-t-h.

Q. You testified as to what companies, briefly now? The five of them?

A. The Commercial Union Assurance Company, Palatine Insurance Company——

Q. (Interrupting.) And the Commercial Union Fire Insurance Company of New York?

A. Yes, sir. The Union Assurance Society of London, and the California Insurance Company.

Q. Those are the five. I have them down here, but it has been so long since we had started on you, I had kind of forgotten some of them. Now, this last report on which you just testified, which is the report really for the 3-year period, 1919 to 1921, inclusive, of the California Insurance Company, shows an ascending scale of business,

doesn't it, throughout—the three years in which it did business in the State of Missouri?

A. Yes.

Q. Is that correct?

A. It is.

Q. Now, is that ascending scale of business also—that also shows an ascending incurred loss each year, doesn't it?

A. Yes, sir.

Q. $345 the first year?

A. Yes, sir.

Q. $6,486 the next?

A. Yes, sir.

Q. And $22,490 the next?

A. Yes, sir.

Q. That is true, isn't it?

A. Yes, sir.

[fol. 624] Q. In other words, with an ascending scale of business, there was a tremendously ascending scale of incurred losses, weren't there?

A. Yes, sir.

Q. Now, the same is true of incurred expenses, isn't it?

A. Yes, sir.

Q. Now, in arriving at your figures and your calculations, I want to speak broadly to you in asking questions about it. You use what, the system of earned premiums?

A. Well, we—yes.

Q. By "earned premiums," you mean what?

A. Premiums that the company has earned during its—it means the premiums that a company has earned, according to a basis on which we have arrived or calculated that we could properly base an earned premium on.

Q. Well, what do you mean by that?

A. Well, what do you want me to go into detail as to how——

Q. (Interrupting.) Tell us what you mean by "earned premiums."

A. Well, we arrive at our earned premium by taking the unearned premium at the end of one period, adding it to the premiums received—in talking about the companies in Missouri—and adding it to the premiums received for the State of Missouri, and deducting therefrom the unearned premium as at the end of the next succeeding period.

Q. Now, how do you arrive at the premiums received?

A. By a tabulation of all premiums.

Q. For the State of Missouri?

A. For the State of Missouri, yes.

Q. I am directing your attention particularly to Missouri. What do you mean by premiums received?

[fol. 625] A. Premiums that are received by way of business written by our agents, paid by the assured to the agent and in turn paid to the company, less premiums returned to the assured by way of our agents.

Q. Before it reaches you? You talk about premiums returned by your agents to the insured. Is that returns made before the money reaches you?

A. Well, it is a part of the record. We tabulate it is well as the agent does.

Q. Perhaps you and I don't understand one another. Now, we will take a specific year, the year of 1921, for the State of Missouri; you want to know what the premiums received for that year were in the State of Missouri, with your company. We will take, say, the California Company. First, now, what do you mean by the term "received premiums" or premiums received?"

A. Premiums received, I qualified that a little more—by gross premiums received, I mean, premiums received from the assured by way of our agents for business written.

Q. Yes.

A. (Continuing:) Those are entered as a specific record on our books. Against that, or to offset that, are premiums returned to the assured by way of our agents, which are also specifically entered on our books; the difference between the premium returned to the assured and the premium received from the assured represents the net received premium.

Q. That is your net received premium. And from your books that is an ascertainable fact, is it?

A. It is.

[fol. 626] The Referee: Pardon me just a moment, Mr. Jacobs.

The Referee:

Q. May it happen that an agent receives a premium, and without ever reporting that premium to your company himself returns it to the insured?

A. No, judge, it cannot.

Mr. Jacobs:

Q. So we can leave that part of it out of consideration, and all these matters appear upon your books because there is a report there?

A. Yes, sir.

Q. So that amount——

Mr. Folonie (interrupting): One question here, if the court please, for illustration:

Q. When business is written, is it reported by the agent in the ordinary course on the same day he writes it?

A. By way of daily reports; yes, sir.

Mr. Jacobs, resuming examination:

Q. Now Mr. Groth, if the amount of net premiums received from the State of Missouri for a definite period, for a year or for five years is readily ascertainable—that amount is readily ascertainable, isn't it?

A. Yes, sir.

Q. Now, then, you say, and you have described to the court and defined to him what you mean by premiums received. Now, when you are——

Mr. Folonie (interrupting): So far, you have been talking about direct writings, however, Mr. Jacobs.

Mr. Jacobs: Yes.

Mr. Jacobs:

Q. Now, you want to arrive at what you call "premiums earned," in order to base your calculations upon that, don't you?

A. Yes, sir.

[fol. 627] Q. Now, will you tell the court how you arrive at that figure?

A. By taking a period of years, for example, this period in question; take the unearned premium for December,

1918, adding that to the premiums received for 1919, which, taking the unearned premiums as shown at the end of the year 1919, gives me an earned premium for that year, the year 1919, and so on; that thought carried through until the end of the period in question.

The Referee: Pardon me, Mr. Jacobs. Q. Is that an entirely accurate computation, Mr. Groth?

A. It is not.

The Referee: Q. Would this be an entirely accurate computation assuming that a company beginning business in Missouri, say in 1920, should write, we will say, 100 policies; all of them for a period of five years. Has no other business than those 100 polices for the 5 year period. On the expiration of three years, could you then compute accurately the amount of the earned premium on that block of business?

A. Well, we could get it as accurately as it is possible under the existing method of calculation of an earned premium.

The Referee: Q. Well, wouldn't three-fifths of the total premium on those 100 policies be earned at the expiration of the three years?

A. Yes.

The Referee: Q. That would be absolutely accurate as applicable to that particular block of business?

A. Yes.

Mr. Folonie: That is assuming all of them are written on the first day of the first year?

[fol. 628] The Referee: Yes. And all remained in force.

Mr. Jacobs: And all written on the same day, a situation that never really transpires in the insurance world, isn't it?

A. Yes.

Mr. Jacobs:

Q. And you never have a simple, definite condition of that kind in arriving at an earned premium as a practical matter?

A. No. It is not humanly possible to do so. It varies from day to day.

Q. No, policies are written on different days; cancellations made on different days; losses transpire on different occasions; return premiums are paid on different occasions,

and the whole thing is reached as best you can, present as it does a complex situation, by simply taking your premiums that are outstanding and unearned at the beginning of your period of calculation, and adding them to what you received for that period. Is that right? And then at the end of the year deduct your outstanding unearned premiums?

A. Yes, sir.

Q. That is as nearly as you can arrive at an accurate result in arriving at earned premiums, isn't it?

A. Yes, sir.

Q. Now, you say that that is not an entirely accurate way of figuring?

A. Yes. I will say it is the best way that can be arrived at under the present method of calculating earned premium.

Q. That is the best way you could do to reach what you call an "earned premium?"

A. Yes.

Q. You also say that a "received premium" is a definitely, ascertainable figure on your books?

A. Yes.

Mr. Folonie: Written premium, you mean?

[fol. 629] Mr. Jacobs: No, I don't. I said "received premium." Just what the witness said.

Mr. Jacobs:

Q. Now, Mr. Groth, looking at your report as a fair example of an insurance experience, as you have offered it here, namely, the report of the California Insurance Company for the years 1919 to 1921, inclusive; and as you suggested awhile ago, there was a steadily ascending scale of incurred losses and incurred expenses along with your ascending scale of business in the experience, wasn't there?

A. Yes, sir.

Q. Now, the result of this way of figuring on an ascending scale of business is clear, isn't it—to arrive at an earned premium, namely, that when you figure your calculations here and arrive not only at an earned premium but at your other figures in order to arrive at the conclusion you have

testified to here, you deduct at the beginning your incurred losses, don't you?

A. Yes.

Q. And you deduct at the beginning your incurred expenses?

A. Yes.

Q. And you add them at the end, don't you?

A. Yes, sir.

Q. Now, on the premiums you just switch the process, and you add the unearned premium at the beginning and subtract it at the end?

A. Yes, sir.

Q. Now, the result of an ascending scale of business is that at the beginning, according to your method of calculation you deduct the smaller amount of premiums, namely, the unearned premiums outstanding at the beginning, don't you—or I mean you add the smaller figure?

A. Yes.

[fol. 630] Q. And at the end of the period, you deduct the greater figure, don't you, on an ascending scale of business? Is that correct?

A. Your statement is correct.

Q. Now, in your calculations when you get on to incurred losses and incurred expenses in an ascending scale of business, as transpire from your reports here, you deduct the smaller amount at the beginning and you add the greater amount at the end, don't you, on incurred losses and expenses?

A. No, not necessarily. That would fluctuate with the year's experience.

Q. Well, that's just what I asked you. I am now looking at your report which you offered here for the California Insurance Company for 1919 to 1921, inclusive. Your incurred losses for 1919 were $345; for 1920 they were $6,486; and for 1921 they were $22,490. Now, that is correct, isn't it?

A. Yes, sir.

Q. According to the way you calculate in order to arrive at your earnings or losses, whichever they may be, you deduct $345 at the beginning, don't you—in your figures?

Mr. Folonie: No. That is the incurred figure you have got and not the outstanding figure. It is the outstanding

losses that are put in at the beginning and end, and not the incurred one. You are reciting the incurred figure, which is the result——

Mr. Jacobs (interrupting): When you use a figure at the beginning of your period, of course, you use the outstanding loss, don't you?

A. Yes.

Mr. Jacobs:

Q. But that is your incurred loss minus your paid loss, [fol. 631] isn't it—that is, your outstanding loss—that is, your incurred loss minus paid losses, and that is what is outstanding against you at the end of the year?

A. Yes.

Q. But your same proportion with reference, from year to year, to an ascending scale of business continues right through there, doesn't it?

A. Yes.

Q. In other words, you have an incurred loss for 1919 of $345, and you have an incurred loss for 1920 of $6,486. Now, your proportion so far as your method of calculation, when you use outstanding losses, remains about the same, doesn't it—as between the years, I mean?

A. No, I would say they do.

Mr. Folonie: Let me have that question read.

(Question read by the reporter.)

A. No, they do not.

Mr. Jacobs:

Q. They do not. Now, let me ask you this: On an ascending scale of business, Mr. Groth, is there usually a corresponding ascension in losses?

A. Yes, sir.

Q. In expenses?

A. Yes, sir.

Q. Well, now let's see if you and I don't misunderstand one another. I don't say to you that incurred losses means outstanding losses. I understand you to say that outstanding losses means for a year incurred losses minus paid losses at the end of that year. That is what you mean, don't you?

A. Outstanding losses—yes, yes.

Q. That simply means incurred losses minus your paid losses. But there is a variance from year to year of figures here on incurred losses. They apparently followed an as-
[fol. 632] cending scale of business during that three years. Now, what I am asking you is this: Not that these figures of incurred losses represent an increase of outstanding losses for these years, but isn't it a fact that this proportion of increase from year to year remains the same?

A. They increase proportionately to the business written.

Q. That is just what I am asking you. So you find here a situation of incurred losses, $345 in one year, $6,000 the next, and $22,000 the next. Now, that is an indication of the ascension of losses which accompany the ascension of your total volume of business, isn't it?

A. Yes, sir.

Q. Now, those smaller figures which appear at the beginning of the period, according to your method of calculation with reference to losses and expenses, are added, aren't they, in arriving at these results, when you arrive at your profit or loss, whichever it may be, and in using your scheme of calculation—that is, smaller figures at the beginning are added, aren't they, say, for 1919?

A. No. These figures are not.

Q. I don't mean the figures that appear on this sheet. I mean the $345 that appears on this sheet as an incurred loss, minus your losses paid that year, representing your outstanding losses is added, isn't it?

A. Yes.

Q. And at the end of the period, 1921, this $22,490 minus losses paid, is subtracted?

A. Yes.

Q. In other words, by your method of calculation the smaller sum is added at the beginning and the greater sum is added at the end, isn't it?

A. Not necessarily.

[fol. 633] Q. If it is an ascending scale of business, isn't it?

A. Yes, but——

Q. (Interrupting.) Well, that is what I am talking about. That is what these figures show, an ascending scale of business; don't they?

A. Yes.

Q. Now, on the premium end of this, you have merely got the figure of earned premiums here, so I will only use it from the standpoint of proportion. You had $1,500 for 1919, and you had $14,000 for 1920, and you had $30,000 odd for 1921. Now, you added the smaller figure—not these figures that appear on here, because you are adding what at the beginning? The unearned premium?

A. The unearned premium, yes.

Q. But the thing increases with an ascending scale of business, naturally, doesn't it, and you have as a practical matter, in this year we are discussing, or this period of this company, ascending scale of business?

A. Yes.

Q. But, you added at the beginning the amount of unearned premiums?

A. Yes, sir.

Q. And you subtracted at the end the amount of unearned premiums?

A. Yes, sir.

Q. Now, here you had earned premiums at the beginning of $1,500 and $30,000 at the end, didn't you?

A. Yes, sir.

Q. That is, earned premiums?

A. Yes.

Q. And that is the proportion which would appear on unearned premiums from year to year, based upon the business done as it appears on this sheet, isn't it?

A. Yes.

[fol. 634] Q. Now, let's look at your ratio of expense and losses. In 1921, you had an expense ratio of 72.2 per cent for your California Company, didn't you?

A. Yes, sir.

Q. That means, does it, that in that year you paid $42.20 on every dollar of premium received, didn't you?

A. Earned.

Q. Or earned. That means on every dollar of earned premium?

A. Yes.

Q. You spent that amount of money?

A. Yes, sir.

Q. Now, your loss ratio for 1921 was 73 per cent is that correct?

A. Yes, sir.

Q. Does that mean that on every dollar of earned premium, you paid out a loss of 73 cents?

A. Yes, sir.

Q. Now, in 1920, you had an expense ratio of 117.5 per cent, didn't you?

A. Losses and expenses combined.

Q. I take that back. That is right. I misread that. You had an expense ratio of 73.8 per cent?

A. Yes.

Q. And a loss ratio of 43.7 per cent?

A. Yes.

Q. That expense ratio means, according to the way you figure at that time, an expense of more than 73 cents on every dollar collected?

A. Yes, sir.

Q. Do you think that is a reasonable expense ratio Mr. Groth?

A. It is, figuring it on an earned premium basis.

Q. Well, isn't that accurate?

A. It is as accurate as it is possible to get an expense [fol. 635] ratio, figuring it on an earned premium basis; as accurately as we possibly could get it.

Q. In other words, when you figure on an earned premium basis, it naturally makes your expense ratio ascend, doesn't it?

A. Yes.

Q. And the result is—and that is true of losses too, isn't it?

A. Yes.

Mr. Hogsett: Speaking of an ascending scale of business?

Mr. Jacobs: No. I am speaking of the method of calculation that when you use the method of earned premiums, as you say, it makes your incurred expense ratio and your incurred loss ratio high, and makes it look high, doesn't it; and you said that a moment ago, didn't you?

A. Yes, sir.

Q. And it is upon those figures that you have arrived at this percentage of loss that appears on the statement in red letters and red figures?

A. Yes.

Q. In other words, when you use earned premiums as the basis of your calculation, you have, for example, 73.8 per cent incurred expense for one year there. That means a high figure, because as a matter of fact you have received a lot more premiums than appear on this paper haven't you?

A. Yes.

Q. And this 73.8 per cent does not reflect the true condition if you take into consideration all the premiums you received, does it?

A. No, it does not.

Q. Now, in 1919, you had the enormous incurred expense ratio of 105.2 per cent, didn't you?

A. Yes.

[fol. 636] Q. Outside of that, without considering your losses, you spent more that year than your earned premiums amounted to by over 5 per cent, didn't you?

A. Yes, sir.

Q. Do you think that is a reasonable expense ratio?

A. I will repeat that it is an expense ratio that we arrived at based on an unearned premium result, as reasonably as we could get it.

Q. I am not asking you about the accuracy at this moment. I am asking about you—do you think that an expense ratio of 105.2 per cent is a reasonable expense ratio?

Mr. Hogsett: Object to that for the reason that it calls for an opinion and conclusion of the witness, and invades the province of the fire of the facts.

The Referee: It calls for an opinion, does it not, Mr. Jacobs?

Mr. Jacobs: Yes, I think it does.

The Referee: Sustained.

Mr. Jacobs: I was curious to know what this witness thought about that.

Mr. Jacobs:

Q. Now, 105 per cent seems an enormous expense ratio at first glance, doesn't it?

A. Yes, sir.

Mr. Hogsett: Same objection; same question.

Mr. Jacobs: He said "yes."

Mr. Leahy: Move that it be stricken out.

Mr. Jacobs:

Q. Now, what I am getting at is this: That if you had [fol. 637] calculated upon the basis of premiums received actually instead of premiums earned, you wouldn't have had 105.2 per cent expense ratio, would you?

A. No, sir.

Q. Now, that is included in this lower figure at the bottom of that particular year, the 27.1 per cent loss for that year. Now, the fact of the matter, Mr. Groth, is that the way you figure and the way you calculate—well, I will withdraw the question. Now, you had some exhibits a little while ago that were offered here in which incurred losses appear. The figures presumably covering incurred losses for each year that the company did business within the required period in Missouri. Now, you can't say that those figures covering incurred losses are correct and accurate, from your own knowledge, can you, Mr. Groth?

A. I did not examine each individual entry that made up those incurred losses, but they are accurate as far as it is possible to get them accurate from the records available.

Q. You didn't even check them in the loss department, did you?

A. No, not individually.

Q. And all you know is that at certain periods that department sent into your department some figures and called them incurred losses?

A. Well, we made the incurred losses—as to the word "incurred losses," they give us the outstanding figures.

Q. Incurred losses, you say, is a calculation?

A. Yes. Well, we made the calculation.

[fol. 638] Q. But you had to take the outstanding losses without investigation from another department, didn't you?

A. I cannot vouch for the accuracy of that outstanding loss. I did not examine each item myself.

Q. Or you didn't examine the books which contain those items in the loss department, did you?

A. No, sir.

The Referee:

Q. In other words, you assume the correctness of the report made to you by the loss department?

A. Yes, sir.

Mr. Jacobs:

Q. And you haven't got a check on them, have you of any kind, on outstanding losses?

A. Yes, sir.

Q. What is your check on outstanding losses?

A. Well, the outstanding losses are marked off as they are paid.

Q. But that does not check the total amount of outstanding losses, does it?

A. It is carried forward as an accumulative total.

Q. But your total is received from the loss department. That is the original figure you start with?

A. Yes.

Q. And you simply check off the paid losses by that, don't you?

A. Yes.

Q. But your check is on the paid losses, isn't it?

A. Yes.

Q. But you haven't got any check on the outstanding losses, have you—I mean the correctness of the total figures of outstanding losses?

A. No. Our loss department verifies that.

[fol. 639] Q. That is where you have to go to get it, isn't it?

A. Yes.

Q. Now, you spoke awhile ago of the unearned premium reserve for the State of Missouri. Now, how do you arrive at those figures? By taking the total premiums for the United States—net premiums for the United States——

A. (Interrupting.) By taking the total net premiums for the United States, and the total net unearned premiums for the United States, which gives me a ratio. This given ratio taken of the Missouri net premiums for any one year gives the unearned premiums that we have submitted here for the State of Missouri.

Q. Which means the unearned premium reserve eh?

A. For that state, yes.

Q. Now, that is a calculation based upon allocations from the various states, isn't it?

A. Yes, sir.

Q. And this figure in turn is used to arrive at the earned premium figure upon which you base all these calculations of profit and loss?

A. Yes, sir.

Q. Now, in giving this testimony concerning the Missouri unearned premium reserve, you took figures which were given you by other officers in other cities didn't you?

A. Yes, sir.

Q. You had nothing to do with keeping the books there, did you, in these other cities?

A. No.

Q. You know nothing about the accuracy of the reports, do you, from other cities—from your personal knowledge?

A. No.

Q. You wouldn't say that all the premiums were reported, [fol. 640] would you, from your own knowledge?

A. No, sir.

Q. In these five companies that you have testified about, are policies written in any other offices besides the city of Chicago?

A. Well, can I qualify my answer?

Q. Surely, tell whatever you want to.

A. Our company is run in a geographical division, western department, Denver department, San Francisco department, and New York department. All the four named cover the United States. The information on which this ratio is based—the premium on which this ratio is based I gathered together by our New York office from these various departments, and entered into our annual statements.

Q. In other words, in Denver there is an office which does business over the country within its territorial zone, doesn't it?

A. Yes.

Q. And that is true of California, and that is true of New York?

A. Yes.

Q. And also of Chicago?

A. Yes.

Q. Now, you know what the premiums received were for the district headed by the city of Chicago, don't you?

A. Yes.

Q. Because that is your bookkeeping—that is your department and your business?

A. Yes.

Q. But you have no way of testifying to the accuracy of the report on premiums received by Denver, San Francisco and New York, have you?

A. No, sir.

[fol. 641] Q. It could well transpire that all the premiums were not reported, couldn't it?

Mr. Hogsett: Object to that as speculative and conjectural.

Mr. Jacogs: I will withdraw it.

Mr. Jacobs:

Q. So when you figure unearned premium reserve for Missouri, first you are accepting figures received from three offices outside of your own——

Mr. Folonie (interrupting): From his home office——

Q. (Continuing:) —upon which to base your figures of premiums received, aren't you?

A. Yes.

Q. And all your calculations——

Mr. Folonie (interrupting): In fairness, Mr. Jacobs—he gets that figure from only one place, and that is his home office, which is collated from those various places.

Q. That is understood, but the home office gets them from three offices outside of your own in Chicago?

A. Yes, sir.

Q. And those figures furnish the basis upon which you make your calculation of earned premiums, don't they?

A. Yes, sir.

Q. And earned premium then, furnishes the basis upon which you make your calculation of profit and loss here?

A. Yes, sir.

Q. When you allocate expenses, now, under your system, does that include all the expenses of your company outside of the direct expenses in the State of Missouri?

[fol. 642] A. Missouri takes its proportionate amount of the expenses outside of that which is directly payable in the State of Missouri and attributed to the State of Missouri.

Q. That covers all other expenses of these various companies about which you testified, these five companies, outside of the direct expenses chargeable against Missouri and paid in that fashion as a direct expense?

A. Yes.

The Referee: Q. Let me see if I clearly understand you there, Mr. Groth. There are certain direct expenses paid in the State of Missouri?

A. Yes.

The Referee: Q. They are charged to the State of Missouri?

A. Yes, sir.

The Referee: Q. There are certain direct expenses paid in every other state in which the company does business?

A. Yes.

The Referee: Q. Now, in considering the general expenses allocated to Missouri, do you or not take into consideration as a part of that general expense the direct expense paid in these other states?

A. No. I don't take the taxes paid in other states or board charge directly paid in the other states. As an example, in my expensive figures, I have taken only that expense that we have paid to the National Board of Fire Underwriters which covers the entire United States. I did not take expenses directly chargeable to any other states outside of Missouri.

Mr. Jacobs:

Q. The theory is that each state pays its own direct expenses?

A. Yes.

[fol. 643] Q. And then there is an allocation of all the balance of the expenses to the various states—now, that is the theory of it, isn't it?

A. Yes.

Q. Now, when you allocate expenses, say, to Missouri, does that mean that you allocate all expenses of every kind and character save direct expenses—when I say "direct expenses," I mean the direct expenses of the various states.

A. Yes.

Q. That includes all expenses of the home office, doesn't it?

A. Yes.

Q. And that includes all the expenses of your investment and your banking departments?

Mr. Leahy: You mean the proportion of those?

Mr. Jacobs: Well, I am talking about the allocation of them.

A. Yes.

Q. And that includes all salaries paid at the home office?

A. Yes.

Q. From president down?

A. Yes.

Q. Does that also include an allocation of the expenses of Denver, say for the California company?

A. I couldn't answer that direct. I have to take the—well, allow me to ask you—to get a little more definite information on that. It will include the expense of the salaries paid in our Denver office, because I have taken the salaries as they were paid, as they were shown on our annual statement covering the entire United States.

Q. Does it include anything else, or are you in position to say, and does it include the other expenses in addition to salaries at the Denver office?

[fol. 644] A. It would include such matters as general postage paid by the Denver office.

Q. Does it include other matters?

A. No, not like inspection matters or taxes or matters of that kind.

Q. Now, how about California? Does the same hold true there?

A. It holds true in all departments.

Q. Excepting that this home office is in California—does the same hold true in New York?

A. Yes.

Q. Now, when you allocate, do you allocate for the entire United States, or do you allocate by zones?

A. I allocate for the entire United States.

Q. So Missouri not only pays an allocation of the expenses of the home office with all its ramifications and various activities in a stock market, but it likewise pays an allocation on the expenses of New York and Denver offices?

A. Yes.

Q. And all expenses for their zones that are not direct expenses?

A. Yes.

Q. Now, what do you regard unearned premium reserve? Do you regard that as a liability?

A. Yes, I do.

Q. To whom does it belong?

A. Well, it is held in trust by the insurance company to pay future losses.

Q. To pay what?

A. To pay future losses.

Q. Losses? Do you hold an unearned premium reserve for the purpose of paying losses?

A. No; no, I didn't mean that. I meant—it is held by the company as part of its reserve.

[fol. 645] Q. In other words, it is a trust fund in the hands of the company?

A. Yes.

Q. And is held for the purpose of paying return premiums, isn't it?

A. Yes.

Q. Have you any idea of what the proportion of the return premiums bear to the total premiums received?

A. Well, they vary. They average about 28 per cent, or 30 per cent.

Q. Do you think it would be stating an accurate insurance fact to state that the relationship of the return premiums to the total premiums received is about 25 to 28 per cent?

A. I would say about 28 to 30 per cent.

Q. Now, that is a figure and an appropriation arrived at over a long period of insurance experience, isn't it?

A. Yes.

Q. So that the companies are, from the standpoint of averages as arrived at by long experience, reasonably certain that there will remain in their hands in the neighborhood of 70 or 72 per cent of the total premiums received?

A. Yes.

Q. Now, what is done? Is this money invested—this trust fund that the companies hold?

A. I can't answer that question because I don't know.

Q. Do you know, as the accountant for your company, whether or not there are interest earnings on the unearned premium reserve?

A. I don't know.

Q. Have you any notion what the total interest on unearned premium reserve for your five companies in the United States amounts to in the year—what it amounts to, roughly speaking?

A. No, sir; I do not.

[fol. 646] Q. Is it a vast sum of money?

Mr. Leahy: That is a conclusion.

Mr. Hogsett: Oh, yes. Objected to as a conclusion.

The Referee: Sustained.

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Do you figure earnings on the unearned premium reserve in arriving at your profit and loss for the State of Missouri— —

Mr. Folonie (interrupting): You mean, has he done so in these calculations?

The Witness: Will you ask the question again, please?

Mr. Jacobs:

Q. Have you figured earnings on unearned premium reserve in arriving at your calculation of profit or losses for the State of Missouri for these years?

A. No.

Q. Have you considered any sources of income whatever excepting earned premiums?

A. No.

Q. That is all that you have figured to arrive at your profit or loss in the State of Missouri?

A. Yes.

Q. That is true, isn't it?

A. Yes.

Q. If your companies are receiving interest earnings upon unearned premium reserve, you haven't that in your calculation?

A. No, sir.

Q. If they have investment earnings, you haven't them in your calculations?

A. No, sir.

[fol. 647] Q. If they have earnings from any other sources in the nature of rents from real property or otherwise, you haven't any of that in your calculations?

A. No, sir.

Q. Now, whatever the financial activities of your company are, Mr. Groth, Missouri paid part of the expenses of those operations in the nature of allocated expenses, didn't it?

A. No, they did not.

Q. Well, now, let's see if they didn't. You say that the expenses which are allocated to Missouri are everything except the direct expenses in Missouri? Didn't you so testify?

A. I did, but I wish to withdraw that.

Q. All right, now let us hear what you say about it.

A. The investment expenses did not appear in the apportioned expenses that we have made an exhibit of here.

Q. Well, now, let's see. You got your allocations from the home office, didn't you?

A. Yes.

Q. And what makes you say, now, that investment expenses did not appear there?

A. Well, I took the—I took my, as you will notice—I took this, as we have made our form under Item No. 17, Note No. 3, I followed this literally: "Under Item 17 d, on exhibit, we included such bureau expenses as the Western Inspection Bureau, Western Board Association, Sprinklered Risk Association, covering operations in Missouri which must be pro rated. Do not include expenses in Item 8 of bureau association expenses such as Illinois Inspection Bureau, are readily chargeable to any other individual states."

[fol. 648] Q. Well, those are direct expenses you are talking about, aren't they?

A. Yes, they are. That is right.

Q. Now, were you accurate in your correction?

A. I was not accurate in my correction. Can I have permission to withdraw that?

Q. Surely. You want to withdraw your correction of a moment ago, and stand upon your original statement that all expenses excepting direct expenses were allocated.

Mr. Leahy: Now, what is it you want to say?

The Witness: I want to say that the investment expenses were not allocated to Missouri.

Mr. Jacobs:

Q. You want to say that now?

A. Yes, I want to withdraw my former.

Q. Well, now, wait a minute. Let's get this straight. You first testified that all expenses were allocated?

A. Yes.

Q. Then you corrected that and said you wanted to take out that part of your testimony that investment expenses were allocated?

A. Yes.

Q. And then a moment ago, when you looked at this same year and saw it related only to direct expenses, you said you wanted to withdraw your correction, didn't you?

Mr. Hogsett: That is purely argumentative.

Mr. Folonie: We object to conducting the examination on the point of getting counsel straight——

Mr. Jacobs (interrupting): Let me ask this question:

Q. Do I understand you to say now that, for purposes of allocating expenses, that all expenses of your company were [fol. 649] included, saving the direct expenses in the State of Missouri?

A. I wish to withdraw my former answer to that, and give you a list of those expenses that were allocated to Missouri.

Q. All right, let's have them.

A. In order they come as follows: Home office salaries and expenses; rents; furniture and fixtures; maps, including corrections; inspections and surveys, including Underwriters' Boards and Associations, but excluding such expenses as are charged against any individual state; postage, telegraph, telephone, exchange and express; legal expenses; advertising, printing and stationery.

Q. Now, are those the allocated expenses in their entirety?

A. They are.

Q. On what year? What is that? That is indicated for what time and for what period?

A. For 1919, 1920 and 1921, California Insurance Company.

Q. Now, did you have any Federal taxes to pay?

A. No.

Q. Why; what happened about the Federal taxes?

Mr. Leahy: Well, it is not on there, is it?

Mr. Jacobs: Well, wait a minute. I want to know about it.

Mr. Jacobs:

Q. What about the Federal taxes on there?

Mr. Folonie: Let's adjourn for lunch.

Mr. Leahy: Well, is it on there?

The Witness: No.

Mr. Jacobs:

Q. Why is it not?

A. I don't know.

[fol. 650] Q. Is it on the other companies?

A. Yes, sir.

Q. But not on the California—don't ever pay Federal taxes in San Francisco? Are all the allocated expenses on there, and what is the situation?

A. The Federal taxes as pertaining to an allocated expense are not entered in this expense exhibit. The Federal taxes directly attributable to Missouri were shown.

Q. Is it possible the entire tax might have been taxed to Missouri?

A. No.

Mr. Folonie: We object to any assumption that 832 might be all their taxes.

Mr. Jacobs:

Q. For some reason or other, you haven't allocated Federal taxes on this particular report?

A. Not as allocated expense.

Q. But you did on the other four companies?

A. Withdraw that. On the Commercial Union, I have not got them on there.

Q. Have you them on the other three?

A. Yes—I don't know.

Q. Well, let's look at it and see. Keep that one that you read from at the top, because I want to ask you about those allocated items.

The Witness: I have not on the Commercial Union or the Palatine.

Q. What is that on Palatine?

A. None on the Commercial Union Assurance Company; none on the Palatine Insurance Company; none on the Commercial Fire of New York; and none on the Union Assurance Society.

The Referee: Well, let's take a recess, now.

[fol. 651] The Witness (continuing): But the Federal taxes were charged as directly applicable to the State of Missouri.

The Referee: We will take recess until 2 o'clock.

(Whereupon, a recess was taken until 2 o'clock in the afternoon of the same day, being Monday, July 9, 1923, at which time the parties reconvened at the same place, and the following proceedings were had:)

George Gooch, called as a witness on behalf of the plaintiffs herein, recalled for further cross examination on behalf of defendant, was examined and testified as follows:

Cross-examination continued by Mr. Jacobs:

Q. Now, when we stopped at noon, we were discussing the question of the allocation of expenses for the California Company weren't we?

A. Yes, sir.

Q. And you had just testified finally upon allocation, as I recall it. That in arriving at your figures, you had used the calculations provided on that report?

A. Yes.

Q. And that it did not include all expenses—investment expenses, for example?

A. Yes.

Q. Now, let's look at that for a moment, and see whether it does or not. Now, you made a list here—you say that you followed the calculations provided in this instrument (referring to Exhibit No. 65). What do you call this instrument which you say is a copy of Exhibit 65?

A. It is an exhibit of expenses, of actual and allocated expenses pertaining to Missouri.

[fol. 652] Q. Is it upon a regular form? Is this on a regular form?

A. Well, what do you mean by "regular form"?

Q. Used in Missouri?

A. No, sir.

Q. Where did you get this form?

A. It was a form adopted by insurance companies to exhibit their expenses.

Q. To whom?

A. For the purpose of bringing it out here as evidence in this lawsuit.

Q. For the purpose of bringing it out as evidence in this lawsuit?

A. Yes, sir.

Q. And this is a form used for the purpose of making a tabulation for this lawsuit. That's right, isn't it?

A. Yes, sir.

Q. And is not a copy of your annual report which you are required to make to the State of Missouri?

A. No, sir.

Q. It is an exact and true copy of what you have been reporting to Missouri?

A. No, sir.

Q. Why isn't it?

A. Because the interpretation that we made at the time as the years—let me withdraw that, please. It is not true copy because the—we put a different interpretation on the Missouri required expenses than we put on them now.

Q. What do you mean by that? Explain that a little more fully.

A. Well, when these expenses were shown on the underwriting experience—well, we didn't know just what the re-

quirements were, and what were the expenses to be included.

Q. Now, have you discussed this particular matter with counsel in this case in this hearing?

A. No.

[fol. 653] Q. Not at all?

A. Well, we have discussed it in the matter of testimony, yes.

Q. And did you agree with counsel that at the time you made your reports to the State of Missouri you were under a different understanding about what expenses should be reported and how reported, than you are now?

A. No.

Mr. Hogsett: Object to the form of that question as not the proper way. It is not a question whether he agreed with counsel, but a question of what the facts are.

The Referee: Sustained:

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Well, you say you discussed it?

The Referee: If you want to be heard, of course, I will be glad to hear you, Mr. Jacobs.

Mr. Jacobs:

Q. You say you discussed this matter with counsel. Now, upon what phases did you discuss it?

A. I did not discuss it with counsel as to any details. No, I did not. I got—just in a general form.

Q. Did you ever go over this testimony with counsel for the plaintiff?

A. Not in detail; no, sir.

Q. Not in detail?

A. No, sir.

Q. Didn't they have you take the witness stand and one of them would examine you, and then the other one would examine you?

A. No, sir.

Q. They didn't do that with you?

A. No, sir.

[fol. 654] Q. You never went over this testimony with counsel for plaintiff?

A. No. I was just instructed with regard to some questions that might be asked here.

Q. Discussed your questions and answers to them, didn't they?

A. Not necessarily.

Q. What did they tell you about that?

Mr. Folonie: You say "they." Why don't you ask who it was?

The Witness. I asked these matters with Mr. Beatty who has charge of tabulating these figures for the companies.

Mr. Jacobs:

Q. No, but I am talking about counsel for the plaintiff in this case. When did you go over these matters with him?

A. I submitted my work to counsel and he showed him what I had, and he took a copy of that; and we discussed them in general terms but not as to how they were made up or anything of that kind.

Q. Didn't you discuss the question of—did you discuss the questions that might be asked you in this examination, with counsel?

A. In a general way, yes.

Q. And did you discuss your answers to them?

A. Well, not necessarily.

Q. What were you discussing?

A. Well, I was asked what answers I might give to them.

Q. And did you tell?

A. Yes, I told them the facts; what I would say.

Q. There were some questions asked you, or suggested that might be asked you here, eh?

A. Not necessarily, no.

[fol. 655] Q. What did you mean, then?

A. I was invited to come up here and listen to some of the argument.

Q. Counsel asked you to come up here and listen to the examination of the other witnesses?

A. In a general way. It was open to the public. I was invited to come if I wanted to.

Q. Who invited you?

A. Both Mr. Beatty and counsel.

Q. Both Mr. Beatty and counsel?

A. Yes, sir.

Q. So that——

A. (Interrupting.) So that in case I was asked to present certain papers, why, I would have them.

Q. And so you would know the general trend of the examination is that right?

A. Yes.

Q. Now, in discussing this matter of expenses. With whom did you discuss the question of expenses in Missouri?

A. I discussed them with Mr. Beatty.

Q. Now, who is Beatty?

A. Beatty has charge of tabulating these figures to be presented here for the testimony.

Q. Is he a lawyer?

A. No, sir; not to my knowledge.

Q. What is his occupation?

A. Why, I met Mr. Beatty but twice, and I don't believe I could answer that question.

Q. Well, where is he from?

A. I don't know that.

Q. Is he some individual that appeared in Chicago here and began the preparation of this case with you accountants?

A. No.

[fol. 656] Q. Well, where is he from?

A. Well, he is employed by some one who I have no direct knowledge of at the present time.

Q. Who introduced him to you?

A. He introduced himself.

Q. And you mean to say that some fellow just came up to you; that you don't know where he is from, who hired him, who he represents, and introduced himself to you; and that he and you began immediately to collaborate on this testimony?

A. He represented the companies. Of course, I understand that part.

Q. How did you know he represented the companies?

Mr. Hogsett: We object to this as just trivial.

Mr. Jacobs: I want to find out if some individual has mysteriously appeared and began—especially in view of the fact that there has been a change in the expense and annual report.

Mr. Hogsett: We object to the counsel as to any mysterious stranger."

The Referee: The testimony of the witness will be the testimony of the case.

Mr. Jacobs: Read the question, now.

(Question read by the reporter.)

Mr. Folonie: I object to his statement with reference to the mysterious appearance of Mr. Beatty.

The Referee: The characterization might well be left out.

Mr. Jacobs:

Q. How do you know he represented the companies?

A. He told me so.

[fol. 657] Q. And you took his word for that?

A. Yes, I did.

Q. The gentleman came up and introduced himself to you?

A. Yes, sir.

Q. Do you know beyond his statement to you for whom he worked?

A. I don't know who employed him, no.

Q. And do you know that?

A. Unless he—why, I only know that he is, as he said, that he was representing the companies.

Q. Well, I mean beyond his statement?

Mr. Folonie: Let him finish each answer.

Q. Have you finished that answer?

A. Yes.

Q. Now, where did he come from: Do you know that, beyond his unsupported statement?

A. Why, he came from the association of the companies.

Q. What association? What association do you mean?

A. Well, an association of——

Q. (Interrupting.) These various fire companies who are plaintiffs in this cause, is that right?

A. Yes.

Q. And where is the home office of the association of companies, or where is the association located?

A. Why, it is located here in this building.

Q. In Chicago?

A. Yes.

Q. Do you—had you ever run across Beatty before in the course of your activities about this building?

A. No, sir.

Q. Never had heard of him?

A. I knew him. I had met him only about a month ago for the first time.

[fol. 658] Q. Up to then, you had never heard of Beatty?

A. No.

Q. You know there was an association of these companies before that?

A. Well, I don't know as you could call it an association of companies.

Q. I am using your expression.

A. Yes. Did I know there was an association of these companies?

Q. Before you met Beatty a month ago?

A. Why, yes.

Q. But you did not know Beatty?

A. No.

Q. Now, you say there appears here a man by the name of Beatty who introduces himself to you—nobody else introduced him to you?

A. No.

Q. Mr. Folonie didn't introduce him, did he?

A. No.

Q. No representative of the companies—your managing officer didn't introduce him, did he?

A. No.

Q. Now, up comes Beatty and says, "My name is Beatty. I represent the association of stock fire companies in Chicago. I want to collaborate with you in getting your testimony ready for this case." Now, that in effect, is what happened, isn't it?

A. Yes.

Q. And thereupon, and without any further inquiry, you began to work with Beatty and get up these figures that you have testified to? That's correct?

A. No, I didn't work with Beatty.

Q. Well, did he work with you?

A. No, he just—he gave me the forms that we were supposed to follow out.

[fol. 659] Q. This form here?

A. One of them, yes.

Q. Now, you testified quite awhile ago, that it was upon your conference with this representative of the companies that you first came to an understanding that you had been making reports improperly to the State of Missouri on expenses. Is that right?

A. Yes.

Q. So you changed that expense report, as you testified to, from the manner in which it had been given to the State of Missouri in preceding years of this period?

A. Yes. For the reason that the instructions were not explicit enough in the state requirements.

Q. Now, for example, what was there about the state requirements that you did not exactly understand?

A. We didn't know just what expenses to include.

Q. And so you included all expenses, eh?

A. No, sir.

Q. What did you leave out?

Mr. Folonie: You mean, reports to the state, or this now?

Mr. Jacobs: I am talking about the state.

A. Well, in the first instance, we were not enlightened as to the proper allocation of home department office expenses.

Q. What was there about it that you misunderstood?

A. There were various things I didn't understand?

Q. Well, for example?

A. Well, we didn't understand—it wasn't thoroughly understood just what board charges to put in.

[fol. 660] Q. Board charges?

A. Yes. National board designated from state boards. National board of fire underwriters' expenses.

Q. Did you allocate them?

A. Yes, we allocated those.

Q. Do you allocate them?

A. Now?

Q. Yes.

A. Yes. I left that out of the previous statements in the state department reports on the Missouri experience charge. I took all the board expenses at that time.

Q. What do you do now?

A. Just take the national board which covers the entire United States.

Q. What other boards are there?

A. The inspection boards and audit bureaus, etc., in the United States.

Q. The inspection board of Missouri: Would you call the Missouri inspection bureau an inspection board of Missouri?

A. I would call that an expense.

Q. I say, would you call that one of the boards you are talking about?

A. Yes, I would.

Q. That is a direct charge you make against Missouri, isn't it?

A. Yes.

Q. What you mean by your statement, as I understand it, Mr. Groth, is that you misunderstood what was required and duplicated some of the expenses?

A. I did.

Q. Now, that is what you mean. Now, you thought Missouri, in order to get the true report of what should be chargeable against her in the way of expenses, wanted you [fol. 661] to duplicate and you consequently did so. Is that true?

A. Well, you got a little ahead of me there. Will you read that question, please, Mr. Blume?

(Question read by the reporter.)

A. Well, my interpretation of the underwriting experience expense report called for a duplication of those expenses.

Q. Well, then, your answer to my question is "yes," isn't it?

A. Yes, yes.

Q. And you did duplicate?

A. In those years yes.

Q. I am going to ask you about this specifically in a minute, but now, going back to what we began on, namely, your apportioned expenses. Now, are these all expenses which were apportiontd to Missouri? Does that cover the losses? There is everything?

A. Yes.

Q. That is everything?

A. Yes.

Q. Now, you said before lunch, that you wished to say to the court that the investment expenses were not here?

A. No. Those expenses are underwriting xpenses.

Q. Are these all underwriting expenses?

A. Yes, sir.

Mr. Hogsett: Wait a minute. Let's get it identified.

The Witness: This is copy of Plaintiff's Exhibit No. 65. [fol. 662] Mr. Hogsett: Yes.

Mr. Jacobs: That is the one I have been talking about all the time.

Mr. Folonie: No, you haven't.

The Referee: Read into the record the itemized statement of the expenses, so there will be no confusion about them.

Mr. Jacobs: He read that off just before lunch.

The Referee: All right.

Mr. Jacobs:

Q. Now, do you mean these board expenses are only underwriting expenses—what you just said?

A. Yes, sir.

Q. How do you know?

A. I have to take the word of the annual statement figures as submitted by our New York office.

Q. Now, here is home office expenses and salaries. Is that a blank; is there anything on there? Is that a blank?

A. That is all included in this row.

Q. When you say "home office expenses and salaries," how can you say that is an underwriting expense?

A. It is so exhibited under our underwriting expense exhibit in the annual statement.

Q. Yes. Underwriting experience includes all expenses

there every year, doesn't it, in Missouri—even sets up your profits, doesn't—investment profits and information of that kind?

A. I don't know anything about that.

Q. Let's understand one another in this thing now. Here is an item. "Home office salaries and expenses." Now, you are not able to say to this court that means [fol. 663] just underwriting expenses at the home office, are you—and salaries?

A. Yes, because it was so reported in our annual statement to the insurance department.

Q. Well, we will look at that a little later. What did you mean, then, this morning when I asked you a little while before lunch if these allocated expenses included the salaries of all your officials at your home office from president down, and you said "yes"? What did you mean by that statement?

A. Well, I meant to say that that was the salary paid all over the United States for home office work.

Q. Well, now, you can't call that underwriting expense alone, can you?

A. No.

Q. Why, of course not. At the home office, every transaction in the world is passed on, isn't it, that that company does?

A. Yes.

Q. Why can you say, then under this item, "Home office salaries and expenses," that that only applies to underwriting expenses? Do you still want to say that as a fact?

A. Do you wish me to designate the difference between underwriting expense and investment expense?

Q. Well, you may if you want to.

A. In a previous question you asked me whether the investment expenses were included in that report and I said "no."

Q. Go ahead, if you want to make an explanation.

A. I say, those expenses shown there as allocated to Missouri are underwriting expenses.

Q. All right. Now, you are in Chicago?

A. Yes.

[fol. 664] Q. Your home office is in San Francisco?

A. Yes.

Q. There you have an allocation of all the expenses of the officers of your company at San Francisco at the home office. The expenses of that office itself, as well as salaries. Now, that is a generalization that appears here under Item 17 of Plaintiff's Exhibit No. 65. Now, is there any way in the world for you to say to this court that that simply means underwriting expense, and that you have a separation there in the activities of these officials or officers?

A. I don't know whether I could truly tell you that. I have to take the home office department's reports for that.

Q. Do you say to this court that you have at your office in Chicago here a statement from the home office that home office salaries and expenses which are charged against Missouri and allocated as part of the total expenses of the business of the United States only covers underwriting and not other activitives?

A. I have no way of telling that.

Q. Then why did you say or do you say you are taking the word of the home office on that matter?

Mr. Hogsett: You are a little bit quick on the trigger in asking the question. You frequently cut off his answer, Mr. Jacobs.

Mr. Jacobs:

Q. Go ahead.

A. The home office statement, as submitted to the insurance department of Missouri, designates thereon the amounts of salaries and expenses paid, of which I, as an accountant of this department, have no knowledge as to its [fol. 665] accuracy. I take them more—as they are put down there, and have taken that figure and allocated Missouri's proportion to it.

Q. Surely. I understood that. What I am getting at is this what is the item, "Home office salaries and expenses"? Now, when they send you the home office expenses to be allocated to the State of Missouri, you understand those are the total expenses of the home office for this country, don't you?

A. Yes, sir.

Q. And there is no separation of the activities of these officials or these men to whom these salaries are paid, as to

whether or not they are doing one character of work or another, is there?

A. No, sir.

Q. In other words, the men to whom this money is paid, do all the work that is done at the home office of every kind and character, don't they?

A. Yes, sir.

Q. And your investments and matters of that kind are handled from the home office, aren't they?

A. Yes, sir.

Q. All right. Now, you have got, "Rents," here. That is the rent that is allocated to Missouri from Denver, Chicago, the home office at San Francisco, and back to New York; isn't it?

Q. Covers every line of activities, that houses the various activities of your company?

A. Yes.

Q. "Furniture and fixtures," that is the equipment that goes into these places where all the activities are carried on isn't it?

A. Yes, sir.

Q. And that is allocated?

A. Yes.

[fol. 666] Q. Now, "Maps, including corrections," that is one of the expenses of your company for the country at large?

A. Yes.

Q. "Inspections and surveys, including underwriters' boards and associations, but excluding—" as it says here—"such expenses as are charged against any individual state." That is general work for the company at large that is allocated, isn't it?

A. Yes.

Q. Then, "Postage, telegraph, telephone, exchange and express." That is allocated. Now, for what that expense is used, you don't know, do you?

A. No, sir.

Q. But you do know it comes from the home office as its total expense to Missouri, don't you?

A. Yes, sir.

Q. And "Legal Expenses," the same isn't it—as far as you know?

A. Yes.

Q. And "Advertising, Printing and Stationery," that's an expense that is used for all the activities of the company and allocated to Missouri, isn't it?

A. Yes, sir.

Q. Then, as a matter of fact, you are not in a position to say, are you, in your testimony, that the investment expenses of your company are not allocated to the State of Missouri?

A. No, I can't tell you that definitely.

Q. All right. Now, Mr. Groth, I wish you would take your reports for your period of three years for the California Company, and let's see what was done, if anything, with reference to the duplication of expenses for that [fol. 667] period. As I understand now, your statement is that you did this because you thought Missouri wanted you to do it. That's right, isn't it?

A. Yes.

Q. Let's see 1921; that is the last year of the period, isn't it? I am showing you the underwriting experience by classes report for Missouri for the year ending December 31, 1920, of the California Insurance Company. It is dated 1921 but it covers the year 1920.

A. No, that would be——

Q. (Interrupting.) Well, see here (indicating). It says, "Underwriting experience ending December 31, 1920." That would be for the year 1920, wouldn't it?

A. Yes, sir.

Q. And it is made in December, 1921?

A. Yes (January).

Q. Now, that is for the year 1920, isn't it?

A. Yes.

Q. Now, let's get this item up here: "Federal gross premium taxes." That is $337.06. Item 4 of expenses paid in Missouri—do you see it?

A. Yes, sir.

Q. Now, that is an expense that was paid direct by the State of Missouri, wasn't it?

A. Yes, sir.

Q. And that was the total expense, that $337, in that item?

A. Yes, sir.

Q. And was paid by Missouri?

A. Yes, sir.

Q. Now, where does that appear again—that same money? Look under item 15, which is what? What is this list or row of figures here?

[fol. 668] A. That is equivalent to the annual statement lines in the annual statement blank.

Q. That is an allocated expense, isn't it?

A. Yes, sir.

Q. Item 15, as it appears on this same instrument?

A. Yes.

Q. That calls for an allocation to Missouri of $356.79, doesn't it?

A. Yes.

Q. And is entitled, "Federal income Tax"?

A. Yes.

Q. Now, this Item 15 covers all the federal income—federal income tax for the United States, doesn't it?

A. I wouldn't be positive—I wouldn't be in a position to say that, because that is a figure taken from the annual statements, and I couldn't definitely swear to that.

Q. Well, does it appear in there as an allocation to Missouri of that Item 15?

A. When that Item 15 was carried in the underwriting experience, it was with my thought in mind in making that out, that it didn't have anything to do with the 1 per cent Federal revenue tax that we paid directly in the State of Missouri.

Q. Now, do you pay a revenue tax in other states?

A. The 1 per cent revenue tax covered in all states.

Q. Every state, isn't it?

A. Yes.

Q. Because it is a Federal Act, isn't it?

A. Yes.

Q. Well, did you include in your total payments the 1 per cent revenue tax that you paid in all the different states, [fol. 669] in your total amount of expenses which you were allocating?

A. No, I understood at that time that that was a different federal revenue tax than the 1 per cent revenue tax.

Q. What have you found out now?

A. Well, I found now that I did not think we should

charge Missouri with federal taxes that were chargeable to some other state.

Q. But you did it in this instrument?

A. No. When that instrument was made out, it was carried with the thought in mind that it had nothing to do with the 1 per cent premium tax.

Q. But, as a matter of fact, you now learn that you did duplicate that charge in Missouri?

A. No, I wouldn't be positive on that now.

Q. Why did you take it out then—what is that man's name you met about thirty days ago?

A. Mr. Beatty.

Q. Now, did Mr. Beatty talk with you about deducting this from your testimony?

A. He did not.

Q. Well, I probably misunderstood you in your examination awhile ago, then. Now, you did deduct it did you—I mean in your testimony?

A. In my revised exhibit of expenses pertaining to this company, I did not include allocating any federal taxes other than the 1 per cent premium federal tax.

Q. Did you take some out of here, then?

A. No.

Q. Is everything in that testimony that is in here in this report I am reading from?

A. Yes.

[fol. 670] Q. Everything is there?

A. Yes.

Q. Well, now, is there any duplication between Item 4 and Item 15?

Mr. Folonie: Talking about the underwriting statement now.

Mr. Jacobs: Experience, yes. Same one I have been talking about all the time.

Mr. Folonie: No, you have been switching over.

Mr. Jacobs: I am talking about underwriting report, 1920, for Missouri.

Mr. Jacobs:

Q. Is there any duplication between the Fourth and Fifteenth?

A. To my knowledge, no.

Q. What do you mean by that?

A. I infer when this statement was made out, this amount was not consistent with this amount. This figure was not included in that. No. 4 was not included in Item 15, as I took it in the annual statement.

Q. Well, whether Item 4 was included in 15 or not, were similar items from other states as Item 4 included in the amount which you allocated?

A. No, sir.

Q. How do you know?

A. I took the company's exhibit and infer that.

Q. Well, how do you infer it? Did they itemize it?

A. Because the federal premium tax is itemized specifically as 1 per cent premium tax in the annual statement exhibit.

Q. That is true, that goes to the state; but when you got all these expenses from the home office, how did it appear then?

A. As a federal premium tax.

[fol. 671] Q. Gross sum, wasn't it; gross sum expenses of that company?

A. Yes, for all states.

Q. And you take that sum, and you allocated it didn't you?

A. No, sir.

Q. What did you do?

A. I took another item called "Federal taxes," there.

Q. What item is that?

A. There is another item specifically called "Federal taxes" there that I used for that purpose.

Q. For which purpose?

A. To cover Item 15.

Q. What kind of item is it you used for 15 when you made this report here?

A. I don't know. It is just scheduled, "Federal taxes," in the exhibit.

Q. Do you know what that included?

A. No, sir.

Q. Then you may have been duplicating?

A. No, sir; because the net per cent premium tax is entered on the annual statement specifically as a 1 per cent premium tax.

Q. That is in the State of Missouri, wasn't it?

A. No, on the general exhibit for all states.

Q. But did you deduct from—do you know whether that was included in this gross amount, the contents of which you say you don't know?

A. No, sir; I do not.

Q. You don't know. But you did take that amount and allocate it, didn't you—that sum that you say you don't recall the name of now?

A. I would like to withdraw the answer on that—no, the [fol. 672] 1 per cent premium tax covering all states in the United States was so designated in the annual statement I paid no attention to that, but used Missouri's own specific amount in making up that exhibit.

Q. That would be Item 4?

A. That would be Item 4. When I took that figure here, Item 15, I took that as a different federal tax, and allocated Missouri's proportion on that exhibit.

Q. Yes, but you don't know what that different tax is that you took when you allocated it?

A. No, sir; I do not. I was positive—I was sure it was not a 1 per cent premium tax.

Q. And you don't know, do you; and if you were right then, why aren't you right now?

A. I inferred it. I inferred it.

Q. It is simply an inference?

A. Yes, sir.

Q. Look at the Item 5, "Inspection and Rating Bureau expenses" of this same instrument, being the underwriting experience of 1920. Now, there is a charge direct to Missouri on there, isn't there?

A. Yes, sir.

Q. Now, down below Item 11, "Inspections and surveys, including Underwriters, Boards and Associations." Now, what happened under that? Here is Item 11 and here is Item 5. Now, Item 5 was a direct charge to Missouri for that year, wasn't it?

A. Yes, sir.

Q. Was Item 5 included in the amount of money which you allocated to Missouri that year?

A. Item 5 is a direct charge; 5 was not included in line No. 11. It was not allocated.

[fol. 673] Q. Were the same class of items from all other

states included in the gross amount which was allocated under Item 11?

A. No, sir.

Q. How do you know?

A. Because I just took Missouri's proportion of national board charges and allocated it under Item 11. Other inspection bureaus of other states were not allocated under Item 11 to Missouri.

Q. What is this item right out here. $355.66? What is that item?

A. That is Missouri's proportion of the——

Q. (Interrupting.) Well, what is this, the same line?

A. That is the total for all states.

Q. In other words, was Missouri charged with this direct sum?

A. It was allocated to Missouri Ratio of premiums on all business—this was figured on the ratio—as Missouri business bore to the whole; that proportion was taken of this total amount.

Q. In other words, $24,360. Was this expense under Item 11 that we have been referring to for the country? Is that right?

A. Yes.

Q. Is that for the country?

A. That is for the country; yes.

Q. Then the fiure at the right of that is Missouri's part of it?

A. Yes, sir.

Q. Now, do you know actually what was included in $24,360?

A. No, sir; I do not.

Q. Then you cannot say to this court that there was not a duplication on that expense, can you? Because under Item 5, Missouri paid a direct expense under that item, didn't it?

[fol. 674] A. Allow me to make a correction on that. You are talking about 1920 now, are you not?

Q. Yes.

A. Well, on 1920 exhibit, it included all the regular—all the board expenses.

Q. Well, then there was a duplication?

A. Yes, I will admit that now, because I thought we were

talking about last year. Last year we discovered it should not have been.

Q. Well, there was a duplication in that instance, any way?

A. Yes, sir.

Q. Now, on 1920, that you just got through testifying about, did you testify in accordance with that today, or since you have been on the stand in giving your tabulations of expenses?

A. Will you read that question?

(Question read by the reporter.)

A. I testified according to my exhibit here.

Q. I know, but is it in accord with your underwriting report for 1920 to the State of Missouri?

A. No, sir; not on this——

Q. (Interrupting.) Did you change it in the respects that I have asked you about?

A. I did.

Q. Now, for 1921, what did you do on that—for 1921, with reference to this federal income tax?

Mr. Hogsett: Speaking of the underwriting exhibit again?

Mr. Jacobs: Underwriting exhibit of Missouri for his California Company for 1921.

A. The latter part of that question, please?

Q. Did you there charge Missouri a direct expense on [fol. 675] federal gross premium taxes?

A. Yes, sir; I did.

Q. There was a direct expense charged to Missouri, there?

A. Yes, sir; there was.

Q. Now, what happened down below under the allocated expenses; was that left a blank?

A. That proportion which I inferred from the annual statement blank pertaining to the same thing that Item No. 4 showed as actually paid direct in Missouri, was not allocated into this total here, under line 15.

Q. Well, there wasn't any total out there. What is the matter with that?

A. Because I did not use those figures. I did not use the 1 per cent premium tax.

Q. But you did not allocate any federal income taxes to Missouri on that year?

A. No.

Q. None at all?

A. No.

Q. Now, was any of this other money included in the excess profit taxes?

A. Not to my knowledge.

Q. Well, now, here is $24,461——

Mr. Folonie: We might shorten this for the purpose of this cross-examination; if the purpose of it is to prove that these underwriting experience by classes blanks are wrong, we are quite ready to concede it.

Mr. Jacobs: And that there, are duplications?

Mr. Folonie: Yes, they are wrong. They are wrong on every figure of them, practically. The blanks are differently construed by all different witnesses, and they can't be logically defended, and we don't undertake to defend those figures. The court will note that we have asked them [fol. 676] as to their figures corresponding with the annual statement and the tax statement. The figures as here given do not correspond with the figures in the underwriting by classes blank, and there are errors in those through misconstructions of what was intended by the blank as to almost every company, and we will admit it was so as to these companies.

The Referee: You refer to the blanks furnished by the State of Missouri?

Mr. Folonie: Yes, if the court please. I don't know that that will be helpful to counsel but we concede the fact, if that is what he is trying to prove—that they are wrong.

Mr. Jacobs:

Q. Did you get up these underwriting reports?

A. I supervised them.

Q. And do you agree with counsel that they are wrong?

A. I do.

Q. And that there were duplications in them?

A. Yes, in some places.

Q. You knew at the time you made them up, and at the time they were signed and acknowledged by an official of

your company or companies, that they were to be sent to Missouri to be a record in the office of the Superintendent of Insurance of that state?

A. They were made up to the best of my knowledge and belief as to their accuracy, and they were so submitted to the manager for his signature.

Q. You say you knew they were to go there as a record?

A. Yes.

[fol. 677] Q. And you say you made the same mistake that other representatives of insurance companies made in those duplications?

A. I do, because no two of them understood them alike.

Q. They all seemed to have made the same mistake. All right, Mr. Groth. Now, do you know whether or not the allocated expenses to Missouri include donations and matters of that kind?

A. I did not so allocate them in my report.

Q. Did there come to you from the home office a statement which was itemized, saying what were donations and what were the other expenditures?

A. No, sir.

Q. Did it come to you as a gross sum?

A. It came to me by way of that annual statement—of the annual statement figures, and they show for the entire United States.

Q. Was it so separated into items that you could tell what were donations?

A. Yes, sir.

Q. And what were not donations?

A. Yes, sir.

Q. In other words, when you receive a report from the home office upon which you base your figures; say, in your underwriting report, you say that the items for donations and things of that character appeared?

A. Yes, sir.

Q. Have you got those figures here in Chicago?

A. No, sir—yes, I have.

Q. Can you produce the figures?

A. I have——

Q. (Interrupting.) I mean the figures which show a separation into items, your total expense account from your [fol. 678] home office, so we can see what were donations and what were not, and so forth and so on?

A. I have the same record which you have in your possession, the annual statement.

Q. Does it show donations?

A. Yes, sir. I saw donations entered there, but I ignored them in making up this report.

Mr. Hogsett: You say "this report." You mean the report of figures from which you are testifying on your direct testimony?

A. Yes, sir.

The Referee: Exhibit 65.

The Witness: Exhibit 65.

Mr. Jacobs:

Q. Now, you are in position to say, then, that in these expenses which were allocated to Missouri, there appeared no donations, no money for entertainment and stuff of that kind?

A. Yes, sir; I do.

Q. Now, can you give us the figures from which or produce here the figures from which you made these reports?

A. Yes.

Q. Will you do it for tomorrow morning?

A. Yes, sir.

Q. All right. You testified today considerably about field men and the expenses for field men. What are the duties of field men?

A. To appoint agents and supervise them during their activities as agents for this company; collect balances; help them in a general way to produce business for the company; and give them the benefit of the advice which they as field men have in the way of——

[fol. 679] Q. (Interrupting.) Are any of them in the nature of agency supervisors?

A. Yes, sir.

Q. And their duties do not go beyond that?

A. Well, they adjust losses some.

Q. But their chief business is the location of agencies, and the advising of agencies, and solicitors, of how to get business, collection of balances, and make adjustments——

A. (Interrupting.) Yes, sir.

Q. They have nothing to do with the inspections of property, have they?

A. They do.

Q. They include that, too, which as I——

A. (Interrupting.) What do you mean by inspectors of properties? When a risk is submitted to the company for insurance, why, upon instructions from the home office to field men, he inspects the property as to the worth it would have to the company from an insurable risk.

Q. Now, Mr. Groth, do you say that you have a man in any location, or men everywhere, who, whenever there is a proposed risk or issuance of an insurance policy, that he goes and inspects that property for value?

A. He does—he does it for the interest of our own company as to its desirability in conjunction with the——

Q. (Interrupting.) I don't care who it is in the interest of. I had no idea it was for the assured. But you say that is a regular policy of your company, that you inspect for value before you issue a policy?

A. Depending upon the risk.

Q. Depends upon the risk. Now, let's understand this. What do you mean by that—you have now placed a limitation on it. What do you mean by that?

A. Well, if an agent submits a risk to us covering on, [fol. 680] for instance, a roofing material establishment, it would be the policy of our company to send a special agent to examine the risk as to the desirability of that risk for our company.

Q. Why roofing company, particularly?

A. Well, that is particularly—has a particular susceptibility to fire.

Q. It is a peculiarly inflammable business?

A. Yes.

Q. Well, of course, there aren't many roofing companies. I suppose you would apply the same rule to a powder mill?

A. Yes.

Q. I am talking about the average insurance. Suppose I was having the furniture in my house insured in your company. Would you inspect it for value before you issued a policy?

Mr. Folonie: We object to going into the question of moral risks in this matter. The witness has not been qualified.

Mr. Jacobs: He says he knows what it is. I am asking him what his company does.

Mr. Folonie: Counsel is making it personal to himself. That might embarrass the witness.

Mr. Jacobs: He don't need to be embarrassed at all on that.

Q. Go ahead.

A. From my knowledge of the insurance business, outside of the accounting department with which I am associated, I know that a risk which has any earmarks of un-[fol. 681] desirability about it, is subject to the inspection of our special agents.

Q. But you didn't answer the question.

A. (Continuing.) And your other question with regard to your—investigating a risk as to value, referring particularly to a household's furniture, I would say "no," that is not generally the case—unless some peculiar angle came up about which—in the submitting of the daily report, and our examiner thought the hazard would warrant a personal inspection by a representative of our company to examine the risk to find if the value was there as the application called for.

Q. Now, what about real estate? Houses and buildings? If there is a proposed issuance of a policy, do you inspect for value before you issue the policy?

A. Not as a rule, no—we—now, the rule as I understand it——

Mr. Folonie (interrupting): Wait a minute, you broke in there.

The Referee: Let the witness finish his answer.

A. We expect our agents to represent us as to values. We take their—when the application for insurance is submitted to us, we go on the presumption that he knows enough of the fire insurance business to know whether a risk is over-insured or not.

Q. In other words, the general policy of your company is not to inspect for value, and the exception is to inspect for value when some peculiar circumstances either raise a doubt or for some other reason, causes you to make an in-[fol. 682] spection. Is that what you have said?

Mr. Felonie: We object to trying to get the witness to characterize his own testimony, and we think rather unfairly, because he has said as to personal property and particularly household goods, that ordinarily there is no inspection, and as to real estate, ordinarily they rely on the agents for inspection, and don't make an inspection there through their other agencies such as field men. Now, to ask to have him give his characterization of it all, can only be misleading and lead to conclusions that we think might prove quite harmful and unjust.

The Referee: Let me get the question, Mr. Blume.

Mr. Jacobs: This witness never made a statement that they inspected for value on real estate in his testimony before.

The Referee: I think I recall his testimony. Read the question, please, Mr. Blume.

(Question read by the reporter.)

The Referee: Objection overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Answer the question, now.

The Witness: Now, let's have the question again.

(Question read by the reporter.)

A. Yes; and I would like to qualify that answer a little further. When an agent is appointed by this company, his instructions call for a specific line of—his instructions call for him to examine a piece of property, as to its insurable [fol. 683] value, and he is appointed with that thought in mind. That he is capable enough to judge whether an insurance policy is taken out to value or not. If he has erred in his judgment, the error is sooner or later established in the office by a corps of examiners who examine the application thoroughly and if there is any doubt as to the agent's manner in arriving at its value or is any doubt as to the value of the property consistent with the amount of insurance, our special agent is to go—he is instructed then to examine it personally to see if such is the case, and help the agent in establishing a proper value.

Q. Do you mean to say that your agents go out and personally inspect for value before they take an application for a policy?

A. I can't answer that question in detail, because we have thousands of agents and I don't know what their policy is individually.

Q. The fact of the matter is, you have got a sort of classification in the shape of a map and book, and your agents and your company look up that property for the character of building it is, don't they?

A. Yes.

Q. And that is what they insure on, don't they?

A. Well, that, in connection with their own knowledge of the man whom they are insuring.

Q. Then they are relying, in a measure, upon the men they are insuring, and consistent with the moral hazard?

A. If they found he is a man whose moral standard is of a low character, it is his bounden duty as per instructions issued to him, not to issue a policy to that man.

[fol. 684] Q. Do your companies do a credit business?

A. Not through this office. I have no knowledge of them doing it in any other department.

Q. Yours is a strictly cash office?

Mr. Hogsett: Aren't you asking——

The Witness (interrupting): I didn't get that question.

Mr. Jacobs:

Q. Does your company do a credit business?

A. Issue a policy on credit? No, sir (addressing Mr. Hogsett). He means: Do we insure credits.

Mr. Hogsett: That is what I thought you understood him to mean. He doesn't mean that at all.

The Referee:

Q. Do you issue a policy without receiving payment for it at the time?

A. No; except in the term—in our farm department when the payment is made by way of notes.

Mr. Jacobs:

Q. Are those interest bearing notes?

A. They are.

Q. Bankable notes?

A. Yes, sir.

Q. And outside of that, you do a cash business?

A. Yes, sir.

Q. When you issue a policy, you get the money for it?

A. The company does not. The representative—the agent does.

Q. Well, that's the same thing. You send the policy to the agent?

A. We send him a blank and he fills it out.

Q. And when he delivers that policy, he gets the cash, doesn't he?

A. Presumably, yes.

[fol. 685] Q. Because you get it, don't you, from the agent?

A. We get it in the course of events. In the course of a certain length of time.

Q. How long a time?

A. Thirty days.

Q. Within thirty days, he has to make his report and remit the cash to you on every policy he sends out?

A. He has to make a report the same day that he issues the policy. He makes a monthly accounting to us once a month, which account reaches us as soon after the close of business as we can get it, and the average agent pays—sends his check with that account.

Q. You wouldn't have any trouble, then, as an accountant of your companies, to figure the cash premiums received in a year, would you?

A. No.

Q. How?

A. No.

Q. You can figure it, can't you?

A. Yes.

Q. For these five companies?

A. Yes.

Q. And it wouldn't take any calculation on your part to figure either, would it?

A. It would be just a copy of our cash book figures.

Q. Straight, plain figures, wouldn't it, from your cash book?

A. Yes; and the total. But not—I couldn't give it at all specifically as paying for any individual policy.

Q. Oh, I wouldn't care anything about that. What interest do you charge on a note to a farmer for a deferred payment for interest?

A. I will have to answer that question by saying, "I don't know." We didn't write farm insurance in this department until just recently, and we have amalgamated our [fol. 686] Denver office with our Chicago office just within a month, and they are the ones who have written the farm property and carry the things along, and we haven't gotten yet down to that point where we have written them through this department; but I assume they charge the regular 6 per cent interest.

Q. Now, have you observed the ratio of losses, and did you observe any increase or decrease in fire losses in the last few years, or any specific year or years?

A. Yes.

Q. What years were they when the fire losses reached the apex?

A. Well, I couldn't specifically state that.

Q. Did you hear the question of over insurance discussed as having to do with enhanced fire losses at the particular time?

Mr. Hogsett: Objected to as calling for hearsay testimony.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted, and still except.)

A. No.

Mr. Jacobs:

Q. You haven't heard that discussed?

A. No.

Q. Have you seen any diagrams issued by the inspection bureau which represent your company in the State of Missouri, showing increased losses and attributing them to over insurance?

A. No, sir.

Q. You have not seen that?

A. No, sir.

[fol. 687] Q. Knew nothing about it?

A. No, sir.

Q. Now, I want to ask you a little about agency commissions. Have your five companies got a uniform commission in the State of Missouri?

A. Well, yes; for the entire state.

Q. With the exception of the cities?

A. St. Louis and Kansas City.

Q. Have you got a different one for Kansas City?

A. I couldn't answer you that question.

Q. St. Louis?

A. St. Louis, yes.

Q. What is the difference between your uniform rate and the St. Louis rate, in Missouri?

A. I don't know. The commissions are marked on the daily reports by our underwriting department.

Q. Have you looked them up? A. We just go by what they put on their daily reports.

Q. Well, you testified to agency commissions, didn't you?

A. Yes.

Q. Do you know whether or not the increase in St. Louis is 15 per cent over your average rate throughout the state?

A. No, I don't know.

Q. You don't know the amount at all?

A. No, I didn't—that does not come within the scope of my department to question those. Outside of what is put down on the daily report of what we are to charge the agent.

Q. Well, when an agent makes a report and reports a premium, he deducts his commission, doesn't he?

A. Yes, sir.

[fol. 688] Q. Wouldn't you have to know the per cent he received before you could tell whether he made a correct return?

A. Yes, that is put on the daily report by the underwriting department.

Q. Haven't you, through them, learned as they are turned over to your department, that premiums in some instances are less than they are in others, because of a greater commission deducted?

A. No, I have not.
Q. You did not?
A. No. I did not question them.
Q. You did know they paid an increased commission?
A. Yes.
Q. You know that now?
A. Yes.
Q. But you don't know how much?
A. No.
Q. Haven't you—or haven't they got a certain percentage added, say, 15 to 10 per cent, as the case may be?
A. Yes.
Q. On top of that, haven't you got a contingent commission?
A. Yes.
Q. That varies with the amount of business done, and the amount of money earned, doesn't it?
A. No.
Q. The contingency is flat?
A. Yes.
Q. Now, you say you have a flat basis of increase called a contingent commission on the profits of the agency for any specific year?
A. Flat rate based on the profits.
Q. That may or may not exist?
A. Depends on the profit.
Q. Do you remember what that flat rate is?
A. Yes, in some cases 5, and in some cases, 10 per cent.
[fol. 689] Q. That is the contingent?
A. Yes. What commission do you mean?
Q. Your agent in St. Louis, when he sends the policy, gets more pay—when you send one of your men out in the State of Missouri, and he sells a policy, he is entitled to a commission, isn't he?
A. Yes.
Q. And when a man works for you and sells a policy in St. Louis, he is entitled to a commission, and I am assuming the two policies are the same?
A. Yes.
Q. Isn't the man in St. Louis entitled to a larger commission?
A. Yes, he is.
Q. Well, now, how much larger?

A. What we pay a man 25 per cent for outside of St. Louis, why, we would pay our St. Louis agent probably 30.

Q. Well, might it be 35?

A. Yes, it might.

Q. Might it be 40?

A. No.

Q. It might not be over 10 per cent?

A. Not over 10 per cent.

Q. Then in addition to that, you have got a contingent that is 10 per cent of the profits?

A. Based on the 10 per cent of the profits of that agency.

Q. What other different commissions have the St. Louis agents got besides those two?

A. Haven't any.

Q. That is all?

A. Yes.

Q. You don't recall of any more?

A. No.

Q. What proportion of the business of your state—in the State of Missouri, of your companies, is done in the City of St. Louis?

A. Oh, I would say about 65 per cent.

[fol. 690] Q. About 65 per cent?

A. I am just estimating that.

Q. Have you ever figured, and can you tell this court whether or not it is a fact that about $500,000 a year is paid in excess commissions to agencies by the companies doing business in the State of Missouri—that is, five companies in St. Louis?

A. I have no knowledge of that.

Q. But you do know the percentage to be about, roughly speaking, as you have just testified?

A. Yes, sir.

Q. Why do you pay more commission in St. Louis than you do in Kansas City?

A. I can't answer that because I don't know.

Q. Now, Mr. Groth, you testified for plaintiffs this morning, and gave your percentages of losses in the State of Missouri, say, for example, for the California Company, and you gave a total loss percentage of 16.4 per cent for the three years you did business in the state during the period under inquiry. That is correct, isn't it?

A. Yes.

Q. Now, I am going to get you to look at these figures of mine, and if you want to, look at your annual statement report to verify them; and we will take the year of 1919. I want you to give in this court the premiums received, premiums paid, of your company for that year. Do you want your annual statement report?

A. Yes. Was question pertaining to the State of Missouri?

[fol. 691] Q. State of Missouri, yes. "Premiums paid 1919" (referring to document).

A. Now, what did you want on that?

Q. What are your figures?

A. Premiums received by this company, or premiums paid? Paid to the company?

Q. Paid to the company.

A. Well, the total premiums, the aggregate of all gross premiums are $7,524.11.

Q. Well, you have to take the return premiums from that, don't you?

A. $1,038.26 return premiums, leaves net $6,491.85.

Q. Can you tell how much premiums you received—how much were paid to you? I will ask you if $6,495 is right—1919?

Mr. Folonie: Is this direct writings now, or all business?

Mr. Jacobs: All business.

A. No, sir.

Mr. Jacobs:

Q. What is the figure?

Mr. Folonie: Total net, 1919.

The Witness: You are asking for the net premiums for 1919—all net premiums received for 1919?

Q. Yes.

A. $6,491.85.

Q. Is that exclusive, now, of your return premiums?

A. Yes.

Q. And had you any other earnings that year besides the net premiums?

A. I can't answer that. I don't know.

[fol. 692] Q. Is there any other figure on there?

A. As pertaining to Missouri?

Q. Yes, sir.

A. No, sir.

Q. None whatever. Can you give me the losses for 1919, save—I am talking about losses paid and not losses incurred.

A. Losses paid were $345.12.

Q. For 1919?

A. Yes.

Q. And are you sure of that?

A. Yes.

Q. Well, you better take a paper. I want you to put down the premiums you got that year for 1919, and any other earnings you have, and then I want you to put down your losses that you have actually paid—I don't want any incurred losses.

A. Well, we received premiums $6,491.85 and the paid losses were $345.12.

Q. How much was your expense?

The Referee:

Q. Does $6,491 take into account your ceded reinsurance?

A. No, there is no ceded reinsurance—it is not the net of ceded reinsurance.

Mr. Jacobs:

Q. Didn't you testify this morning to $1 on that item for 1919? And at that time you said you didn't know where it came from, but you assumed it was a loss paid?

A. That was on tornado.

Q. $344 for—well, go ahead then. How much was your expense?

A. Expense for 1919?

Q. Yes. Paid, now—not incurred.

A. The actual expenses paid for 1919 directly applicable, $1,124.

Q. And how much more?

A. Apportioned home office expenses were $518 more.

Q. Add them all together. You better put them in a row down there, Mr. Groth. Better put "Premiums," and

[fol. 693] then better put "Other earnings," and then put "Losses," and then put "Expenses." Just put them in a row and then the figures under them, "Losses," "Expenses," and then "Total Losses and Expenses" in another column after that last one. Now, give me your total expenses.

A. $1,124 direct, and $500 apportioned on the New York office, and incurred expenses——

Q. (Interrupting.) I don't want any incurred expenses but paid expenses.

A. All right.

Q. How much are your losses and expenses together? Add those two figures. How much is that now—that is for 1919.

A. $1,987.

Q. All right. Now, that is for 1919. Put that out in front of it. Now, take 1920. What are your premiums received that year?

Mr. Folonie: Total net?

Mr. Jacobs: Net premiums. What do you get for your 1920?

A. $49,169.

Q. And that is your net premiums received?

A. Yes, sir.

Mr. Folonie: No, that is gross net.

Mr. Jacobs: I don't want any gross net. You haven't deducted your return premiums from that?

Mr. Folonie: He wants your total net.

Mr. Jacobs: Take your return premiums from that figure.

Mr. Folonie: Your last figure on the sheet there.

A. The total net premiums are $36,343.

[fol. 694] Mr. Folonie: You better correct your figure on 1919 for him, too. You gave the gross net there, too.

The Witness: I copied it from the annual statement; ceded reinsurance off of that.

Mr. Jacobs:

Q. Now, what is 1920—here is 1920. Look at these figures at the bottom. These two items here. One of them

is "Interest earned on unearned premiums in Missouri business, and interest earned on capital tock and purplus pro-rata for Missouri." Now, what does that mean? That means other earnings, just like it says on the underwriting report of 1920, doesn't it?

A. Yes, sir.

Q. Well, put me a column down for that. Just make a column out there for that. Now, I want you to look—here is 1919, that is your first one, isn't it?

A. Yes.

Q. $452. That appears on the underwriting experience of 1919 of your company for Missouri?

A. Yes.

Q. 1920, $2,512 on your report, next one, isn't it?

A. Yes.

Q. Put those down. Another column for that. 1919, $452; 1920, $2,512. Now, let's see what the next year is 1921 I will show you your California Company report, underwriting experience. Does that appear then as their earnings, $2,566?

A. Yes.

Q. Now, in this column of premiums received—net premiums received—if it includes reinsurance, is there any way that you can separate those items and take out what we are not entitled to? If there is any business there which you [fol. 695] ceded, and where you parted with part of the premiums deducted from the total amount?

A. All right. I want to make a correction for 1919.

Q. All right.

A. Net premiums with the reinsurance deducted is $5,112.

Q. All right, put it the way it is. Now, for 1919, you have got your net premiums on direct business?

A. Yes.

Q. Next, you have got other earnings $452?

A. Yes.

Q. And then you have got your losses, haven't you, right here?

A. Yes.

Q. Paid. Your expenses paid?

A. Yes.

Q. All right. Now, for 1920, for premiums what have you got?

A. $36,343.

Q. Is that the net direct business?
A. It is all business less ceded reinsurance.
Q. What have you got now on your earnings?
A. $2,512.
Q. Now, what have you got on your losses paid?
A. $345.
Q. Losses paid?
A. Yes, sir.
Q. For 1920?
A. No, 1920 is $4,465.
Q. Now, is that the losses actually paid by your company?
A. Yes, sir.
Q. For 1920?
A. Yes, sir.
Q. Are you sure of that?
A. Yes, sir.
Q. Now, what is your expense paid for 1920?
A. Directly applicable to Missouri, $7,258.
Q. What is your allocation?
A. $3,486.
[fol. 696] Q. All right, now add them all together. Now, here is—while we are on this subject, your company's underwriting report to Missouri for 1920—that is, for the year 1920, made in 1921?
A. Yes.
Q. What does it show your losses to be here?
A. $1,335 on direct business.
Q. Well, you have deducted your other business there, haven't you, from your premiums?
A. No, there is a difference—direct premiums are explainable by saying that they represent premiums received without—directly from the assured, and not by way of assumed reinsurance from other companies. Let me change that answer. Direct premiums and losses are those premiums and losses which deal directly with the assured, and there is no assumed or ceded reinsurance taken into consideration.
Q. All right. Now, you have deducted this reinsurance from the premiums that you have put down there, haven't you? I asked you to, and you did it, didn't you? In your premiums you have got down there?

A. Yes. This exhibit as—the exhibit as shown to the State of Missouri represents business assumed from other companies as well as direct business and reinsurance deducted that was ceded to other companies. That exhibit you are showing me there——

Q. (Interrupting.) Is your exhibit.

A. (continuing) The underwriting exhibit deals with direct business only.

[fol. 697] Q. But what I am getting at is this. This figure you have put down here are the net direct premiums received, and leaves out of consideration the reinsurance, doesn't it?

Mr. Folonie: Haven't got any net direct premiums shown any place.

Mr. Jacobs: Of course, if you are going to testify, Mr. Folonie, you better take the stand.

The Witness: These premiums represent the net premiums include reinsurance assumed and eliminate reinsurance ceded.

Mr. Jacobs:

Q. It includes reinsurance assumed?

A. Yes, from other companies.

Q. But eliminates—and has as a deduction reinsurance ceded to other companies—what about these figures here on losses for 1920?

A. They are based on the same—they are direct agency losses.

Q. What is the loss you ought to put down on this report of yours?

Mr. Folonie: We object to that, if the court please, because misleading and calls for a conclusion; doesn't show whether he is talking about the figures he is having the witness put down or his underwriting report, and it can lead to nothing but confusion.

Mr. Jacobs: Read him the question.

(Question read by the reporter.)

A. Just what it calls for.

Mr. Jacobs:

Q. It calls for direct losses?

A. Yes.

[fol. 698] The Referee: Reframe your question, Mr. Jacobs.

Q. Now, for 1920, I am trying to get at the losses, Mr. Groth. I am showing you your underwriting report for that year that is your California Company, and I am indicating under the item entitled "Losses." Now, what is that item and how much it is?

A. $3,335.

Q. Now, is that what should be down in this discussion we are having now on these figures we are putting down as losses paid?

A. No, sir.

Q. All right, what ought to be there?

A. Instead of this, the annual statement losses; these losses which include reinsurance assumed and take into consideration reinsurance ceded.

Q. Why is there a difference between the annual statement report and this underwriting report?

A. Because the Insurance Department called for it on that basis.

Q. On the basis of what?

A. To ignore reinsurance assumed and ignore reinsurance ceded.

Q. And to just figure——

A. (Interrupting.) The instructions as given on the outside of the underwriting experience blank state as follows: "Report gross direct business written, less only cancellations; gross direct premiums received, less only returned premiums; gross direct losses paid, less only salvage, on each class as indicated; reinsurance either ceded or assumed should be disregarded entirely."

Q. "Except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company then [fol. 699] such assumed reinsurance should be reported." That is on it, too, isn't it?

A. Yes, sir.

Q. These figures, then, on the underwriting report, are the losses paid on direct business?

A. Yes, sir.

Q. Go ahead, and put it in your way. How much have you got now? What have you got for losses for 1920? How much did you put down for 1920 on losses?

A. $4,865.

Q. What is your expense for 1920? You figured that a moment ago?

A. $10,744.

Q. All right. Now, what are your total losses and expenses?

A. $15,000——

Q. (Interrupting.) Put them down on your list there.

A. $15,609.

Q. Just state 1921 next, and let's finish it first. 1921. Now, what are your premiums?

A. $70,000.

Q. Does that include them all?

A. Yes, sir.

Q. $70,000. Does that include them all?

A. Yes, sir.

Q. You are sure of that?

Mr. Pidcock: Total out.

Mr. Lundin:

Q. What are your other earnings, if any?

A. $7,500.

Q. Put it down.

A. It is down.

Q. Can you show me on your underwriting report for that year in the State of Missouri, what your premiums were?

Mr. Pidcock: You mean as reported?

Mr. Lundin: Yes, as what is reported to the State of Missouri.

A. $78,130

Mr. Lundin: Look again.

A. $70,000

Mr. Jacobs:

Q. Now, that is the report that came from your company on premiums, isn't it?

A. Just a minute. Let's see whether it is—this is the 1921.

Q. Yes. That is the 1921 report, isn't it?

A. Yes.

Q. Now, is that correct? That you reported to me in 1922 that for 1921 you had these premiums: $38,819.66. That is right, isn't it?

A. Yes.

Q. There put it down.

Mr. Polonie: We object to confusing direct writings and net figures.

Mr. Jacobs: What do you mean by direct writings?

A. Ignoring reinsurance assumed and reinsurance ceded.

Q. This figure of $38,000 is based upon the same figures you have been giving, isn't it? It says here on your report, "Grand total of class premiums," in your underwriting report for 1921. That is the way it is entitled, "Premiums, grand total by classes." Doesn't it?

A. Yes.

Q. That is $38,819.66, isn't it?

A. Yes.

Q. Put it down.

A. That is not on the same basis as this other 1919 and 1920.

Q. All right.

A. I have $20,000.

Q. You are going to take $20,000 off?

A. Yes. $20,000.

Q. What other earnings have you got?

A. Well, my underwriting report shows $2,500.

Q. Put it down please.

A. I have it down.

Q. Now, what are your losses?

A. May I qualify that answer? Those other earnings that you are asking me to put down are just estimated earnings. I have no way of verifying that. I estimated them from the home office.

Q. You estimated other things from the home office, didn't you?

A. You can't give an accurate division for Missouri.

Q. Don't you allocate capital stock to Missouri?

A. No, we just take the Missouri premium proportion of it.

Q. Based upon the premium business of Missouri to the premium business of the whole country?

A. Yes.

Q. That is what you did on all your other calculations, wasn't it?

A. Yes.

Q. Now, what is your losses for Missouri for 1921?

Mr. Polsgrove: Paid, you want now?

Mr. Jacobs: Oh, surely—I am talking about paid losses.

A. $22,587.

Q. All right. What is your expense?

A. $12,264.

[fol. 702] Q. Now, I want you to add the premiums for that period of three years that you have got there.

A. $70,347.

Mr. Polsgrove: I didn't understand counsel was asking for an answer.

Mr. Jacobs: He added them.

Mr. Polsgrove: I wish the objection to show before the witness answer as to figures there, on the ground that the calculations when so made is misleading, is not productive of any proper issue herein, and is not upon any basis upon which this action can in any way properly rest.

The Referee: I can't assume that from the evidence before me now. That fact, if it exists, may be brought out on redirect examination. Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Add up your other earnings, will you, Mr. Gould?

Mr. Polsgrove: Don't mention any figures unless he asks for it, because I want a chance to object.

Mr. Jacobs:

Q. For the three years. Have you got it now?
A. Yes, sir.
Q. Will you give it to the court?

Mr. Folonie: We object on the ground that there is no evidence showing or tending to establish the correctness of such other supposed earnings, and if it is the sum purported to be part of the earnings of the particular plaintiff respecting its corporate stock and surplus that the same [fol. 703] may not properly be considered in determining the propriety of a rate here. If they relate to earnings outside the State of Missouri, that to permit proof thereof would operate to deprive the plaintiff of its constitutional rights, particularly under the Fourteenth Amendment, and that it would be a taking of property without due process of law, and denying the plaintiff the equal protection of the law.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Now, what was the figure?
A. $5,530.
Q. What is your total of other earnings and premiums that we now have got it?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Now add them up then. Put your figures down. Now, what is it?
A. Are you asking me what the premiums and other earnings, the totals are?

Q. Yes. Have you got it?
A. I have.

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

[fol. 704] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $75,873.

Mr. Jacobs:

Q. Now, will you add your losses?

Mr. Folonie: Same objection to permitting an answer to that.

Q. Did you get it?
A. Yes, sir.
Q. How much do they amount to?

Mr. Folonie: We object on the ground that it is not any proper criterion, ignores the incurred and outstanding losses of the plaintiff, and therefore, is upon an improper predicate and basis.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. What are they?
A. $27,397.
Q. How about your expenses? Will you add them for the three years? (Witness complies.)
A. I have it.
Q. All right, what is it?

Mr. Folonie: We object to evidence of the paid losses, paid expenses, upon the ground that it eliminates from consideration the outstanding unpaid expenses, and therefore, is upon an improper predicate and basis.
The Referee: Overruled.

[fol. 705] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Q. What are they?

A. $24,650.

Q. Now, will you add your expenses and losses together? How much are your losses and expenses paid for the period of three years your company was doing business in Missouri?

Mr. Folonie: Now, we object on the grounds of objections urged as to the total of paid expenses, and the objection as to the total of paid losses, and adopt the objections made to each of those elements to the present attempt to secure a combination of both.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. What are they?

A. $52,947.

Mr. Folonie: I think Your Honor should rule twice on that, because it involves two elements.

Mr. Jacobs:

Q. What did you say your premiums and other earnings were?

A. $75,873.

Q. Deduct your total losses and expenses from your premiums and other earnings.

Mr. Folonie: To that we make the same objection that we made with respect to number of paid premiums, the objection which we made respecting the other earnings including our constitutional objection; also the objection we made as to paid expenses, and the objection we made as to paid [fol. 706] losses, and we combine all those objections into one objection to the present or composite question.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. How much does it leave?

A. $23,826.

Q. Your total—your net premiums and your other earnings exceeded your losses and expenses paid by $23,826 over that period, didn't they?

A. Yes, sir.

Q. Yours is a foreign company, isn't it?

A. What do you mean by foreign?

Q. It is an English company, isn't it? Has it got a deposit capital in this country?

A. Yes, sir.

Q. Well, that is because it is a foreign country. That is the way they reach the situation, isn't it—by having a deposit capital in the United States?

A. I don't know.

Q. Well, you have a deposit capital in the United States?

A. Yes.

Q. What was it for 1919? $200,000? Look and see. I am just talking from memory on that, and I am not sure about it.

A. $400,000.

Q. What is it for the next two years?

A. I don't know. That is changed.

Q. A million dollars, wasn't it? Now, look in here. This is for 1920 (indicating document). And this is for 1921? [fol. 707] This is $400,000, which, of course, was your deposit capital for the entire United States, wasn't it?

A. Yes.

Mr. Folonie: Speaking of the California?

Mr. Jacobs: Yes.

Mr. Jacobs:

Q. Is that a foreign corporation? It is an English company?

A. It is an American company.

Q. I thought it was an English company. Your capital then was $400,000 for the United States?

Mr. Folonie: We object to assuming the company's capital as for any particular country. It is for the United States.

The Witness: Let me withdraw my answer. This is an American company, and the capital paid up for 1919 is $400,000.

Mr. Folonie: Foreign to Missouri, and domestic to the United States.

The Witness: One million dollars for the other two years.

Mr. Jacobs:

Q. That makes what for the three years? $2,500,000? Is that capital employed for the three years $2,400,000?

A. No.

Mr. Folonie: Object to adding the capital together year by year.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 708] Mr. Jacobs:

Q. Does that make for the three years?

A. No, sir.

Q. It does not. All right. What proportion of business did Missouri do to the country at large for those three years?

A. I don't know.

Q. Can't you tell from your reports, and your allocations, and everything of that kind that you have been making?

A. I could compute it, yes.

Q. That is what I wish you would do. I want to know what it is.

Mr. Folonie: I suggest when you multiply the capital by the number of days in the year, it would be 365 million a year—we object to that, too.

Mr. Jacobs: We can take this grand total and divide by three, and take this capital for each year, and figure it that

way, but I was figuring the total business on the three years on the total capitalization, or $2,400,000. Of course, that is my way of figuring. They seem to differ.

The Referee: Objection is overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: While you are figuring, I want to look up that California Company.

The Referee: We will take a short recess here.

Mr. Jacobs: Figure up the proportion of business during the recess, of Missouri to the country, for the three years.

[fol. 709] (Whereupon, recess of ten minutes was taken, after which the following proceedings were had:)

Mr. Jacobs:

Q. Did you figure what percentage the Missouri business was to the total amount done in the country during that year?

A. Yes, sir; 1.3 per cent.

Q. Now, will you take 1.3 per cent of the capital employed in the state during that three years, or $2,400,000?

Mr. Folonie: I don't object to figuring it, but when he starts to give any figures, then we shall object.

The Witness: Give us the figures again.

Mr. Jacobs:

Q. You say the business in Missouri bore the relation to the business of the entire country of 1.3 per cent?

A. Yes.

Q. And your total capitalization over that period of three years for capital employed for the whole United States was $2,400,000, wasn't it?

A. Yes.

Q. Now, what I want you to do is to take 1.3 per cent of that $2,400,000, and let me know how much it is.

Mr. Folonie: Make your calculation.

(Witness complies.)

A. $31,000——

Mr. Folonie (interrupting): Just a minute, first. We object to permitting the witness to testify as to this proportion of the capital on the ground that no part of the capital of the plaintiff was employed in Missouri, that calculating the same, or supposed profits or earnings thereon, is incompetent and no proper relation to the subject matter of [fol. 710] rates; that the rates as calculated in the State of Missouri, and showing a loss therein, cannot be offset by profits in the other part of the United States or by other activities of the company or by investment of its capital or surplus; that to permit the answer would be invasive of the rights of the plaintiff as guaranteed by the Fourteenth Amendment of the Constitution, and would be taking his property without due process of law; and that if the statutes be so construed as to permit of such action, then such statutes are in violation of the same constitutional provisions.

The Referee: The question simply requests the calculation, which anyone could make. In that sense, it is hardly evidence at all. It is more a matter of kindness on the part of the witness in relieving counsel and the referee of the necessity of making calculations, perhaps. Objection overruled.

Mr. Folonie: We add to our objection the assumption of the referee that there is any necessity for anybody figuring.

The Referee: And that objection is also overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time to each of them excepted and still except.)

Mr. Jacobs:

Q. How much is it?

A. $31,200.

Q. $31,200?

A. Yes.

Q. Now, how much was your balance of your premiums over and above your total paid expenses and losses?

A. $23,826.

[fol. 711] Q. Now, will you give me—assuming those figures are correct, will you give me your percentage of profit?

Mr. Folonie: To that we make the same objection as the objection last made to the court.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Have you got——

Q. (Interrupting.) You have got a balance of $23,826, and you have got an allocation of capital stock of $31,200. Now, will you give the court the percentage of your earnings on that?

Mr. Folonie: We object to any assumption that this is earnings, if the court please; and add that to our objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Can you figure the per cent?

A. No, I cannot.

Q. You don't know how to figure that?

A. No, sir.

Q. Do you know how—if you have got a profit—on the figures you show an earning there of $23,826?

A. Yes.

Q. Don't you?

A. Yes.

[fol. 712] Q. Now, we show an allocated capital there of $31,200, don't we, based upon volume of business done in Missouri?

A. Yes.

Q. Do you know what percentage of earnings that makes, based upon that allocated capital?

A. Yes, that percentage of earnings, yes; I thought you were looking for profit.

Q. Now, give us the percentage?

A. Well, that would be 76 per cent.

Q. About 76 per cent, wouldn't it?

A. Yes.

Q. Now, Mr. Groth, has your company, the California Company, any investments in the State of Missouri?

A. Not to my knowledge.

Q. Never heard of any, did you?

A. No, sir.

Q. Using the figures of premiums received as we took them from your report, and the losses paid, and the expenses paid for the 3 year period that this company did business in Missouri, with an allocation of capital based upon the relationship of the total business done in Missouri with the total business done in the United States, and there appeared a profit of 76 per cent, didn't there?

Mr. Folonie: We object to it as calling for an unwarranted conclusion.

The Referee: It is the result of a mathematical calculation which has been made, is it not?

Mr. Jacobs: Yes.

The Referee: It appears from the figures themselves; sustained.

[fol. 713] (To which action and ruling of the referee, the defendant, by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: All right. Because it is a mathematical calculation?

The Referee: Because it is a matter which appears from the figures given, and the calculations.

Mr. Jacobs: It was a mere recapitulation and reply to the calculations which were made and offered in evidence, and admitted in evidence, by this court, of the plaintiffs, touching upon the losses or profits, according to their method of figuring.

The Referee: True, and given percentage shown—on this basis.

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Mr. Groth, do you know the various classifications of moneys and funds of your company—and do you know how they are carried?

A. No, sir.

Q. You run the accounting department, don't you—are at the head of it, aren't you?

A. I am.

Q. Do you know whether your company, as a matter of acual banking, maintains a conflagration reserve?

A. I don't know.

Q. Isn't it a fact that whatever conflagration reserve you may have, if you have one, is merely the reserve which appears in your surplus?

A. I don't know.

[fol. 714] Q. You don't know. Who does the unearned premium reserve belong to?

Mr. Hogsett: Objected to as calling for a legal question.

The Referee: Sustained.

(To which action and ruling of the referee, the defendant, by counsel then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Do you charge it as a liability on your books?

A. I don't know. I have nothing to do with the unearned premium reserve.

Q. Did you testify that you did this morning?

A. No, sir.

Q. When your company pays dividends, do you charge that as a loss on your books?

Mr. Folonie: We object to assuming—going into the question of dividends, on the ground that the company, having sustained a loss in Missouri, that the question of dividends would necessarily arise out of business elsewhere for making good the Missouri losses, and that therefore, any inquiry into the subject of dividends is improper as bearing upon the propriety of rates in the State of Missouri.

Mr. Jacobs: Pretty far-fetched idea that this company sustained a loss. Read the question to the witness, Mr. Blume.

(Question read by the reporter.)

A. I don't know.

Mr. Jacobs:

Q. You don't know how you carry dividends on your books?

A. No, sir.

[fol. 715] Q. And you are the head of the accounting department in this great Chicago zone?

A. I have nothing to do with the disbursements.

Q. You know, as a matter of accounting, how dividends are carried, don't you? How do you charge them on the books, do you know?

A. Why, I assume they are charged as a loss—as a corporate expense.

Mr. Leahy:

Q. Have you any knowledge of it?

A. I have no absolute knowledge of it.

Mr. Jacobs:

Q. What do you think the added expense of reinsurance is, Mr. Groth—if you know?

A. Well, state your question a little more plainly.

Q. I mean by that, that in the conduct of reinsurance business, there is always an added expense, isn't there?

A. A commission expense, yes.

Q. Well, there is an overhead expense, isn't there?

A. Yes.

Q. What do you think the increase in expense is, due to reinsurance?

Mr. Folonie: We object because it doesn't show increase over what?

Mr. Jacobs: Over direct business. The result of doing reinsurance business.

Mr. Folonie: We object also because it does not distinguish between assumed and ceded, or which one makes, or which one loses.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 716] Mr. Jacobs: Both reinsurance. Go ahead.

A. Do I interpret the question is both assumed and ceded reinsurance?

Mr. Jacobs: Surely; both of them are reinsurance, aren't they?

A. Well, the assumed reinsurance is taken on as a direct—as a writing proposition only, and accords with the general business.

Mr. Jacobs:

Q. Increases your volume, doesn't it?

A. Yes.

Q. And your overhead increases with your volume, doesn't it?

A. Yes.

Q. You know what your ceded is; it increases somebody else's volume, doesn't it?

A. Yes.

Q. Besides being once by you?

A. Yes; and adds the additional expense of a department called a "reinsurance department" in an office, which entails an additional expense of clerk hire because that kind of work is handled differently than reinsurance assumed.

Q. Would you say that an increase of 4½ points for an increase in expense due to reinsurance, that 4½ points would be a fair estimate of the increase in expense?

Mr. Folonie: Object to it on the ground the witness has not been qualified.

Q. If you know.

A. I don't know.

Q. Have you in your insurance studies and investigations, ever investigated that matter?

[fol. 717] Mr. Folonie: Object to that because it assumes the witness has conducted insurance studies, which does not appear.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I have never had occasion to delve into a question of that kind.

Mr. Jacobs:

Q. Do you read the Insurance Field?
A. Yes.
Q. Did you ever see a discussion of it in that paper?
A. Not to my knowledge.
Q. You don't remember?
A. No, sir.
Q. That is a paper which is practically maintained through advertising by the insurance companies, isn't it?

Mr. Folonie: We object to going into contents of newspapers, if the court please, as hearsay, and contrary to the constitution.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. No, I don't.

Mr. Jacobs:

Q. You don't know that?
A. Wait a minute. He got me all twisted up on that.
Q. Well, do you recall reading a discussing of the added expense of reinsurance, in The Insurance Field?
A. No, sir.

[fol. 718] Mr. Folonie: Objected to whether he did or not.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. You don't remember. All right

Mr. Leahy: What date was that?

Mr. Jacobs: I can get it. I have got it at home. I have forgotten the date, but it is not very long ago. Just comparatively recently, and I know its calculations are 4½ points for reinsurance, and I will establish it in this case.

Mr. Folonie: Move to strike out the testimony of counsel as not being given under oath.

Mr. Jacobs: Well, I tell the court now, when the times comes, I will produce that testimony.

The Referee: Sustained. I am ruling on what is now before the court, and not what may be.

(To which action and ruling of the referee, the defendant, by counsel then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Mr. Croth, do your reports and your figures you have given for your five companies cover unregulated insurance in the State of Missouri, or regulated?

A. Which reports do you refer to?

Q. Your testimony of today.

A. Covers them all.

Q. Now, what insurance did you write in the State of Missouri besides the classified forms under the statute?

[fol. 719] Mr. Folonie: Object to that because it says "under the statute;" because it assumes the statute covers only a certain class which is not the case.

The Referee: Make your question a little more definite.

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

Mr. Jacobs:

Q. Do you write automobile insurance?

A. Yes, sir.

Q. Do you write marine?

A. Inland marine, yes.

Q. Do you write any other kind of marine—your company?

A. No.

Q. Do you write marine in San Francisco?

A. Yes, I guess—I assume they do. I am not sure.

Q. Do they write marine in New York?

A. Are you asking me this for the California Insurance Company, or for our five companies all told?

Q. I am asking you for any or all of them.

A. Well, some of them—the Commercial Union Assurance Company writes the marine business.

Q. Does the California Company belong to it?

A. Well, the stock is held, I presume.

Q. The control of that company is in the hands of this Commercial Union Company?

A. Yes; the stockholders.

Q. Now, you don't—your Commercial Union Company does not write any marine insurance in the State of Missouri, does it?

A. Inland marine, yes; on the Mississippi River.

[fol. 720] Q. I mean ocean traffic?

A. No.

Q. But they do write it in California and New York?

A. I don't know about them writing it in California, but in New York I know.

Q. Now, your expense for the conduct of that business is allocated to Missouri, isn't it?

A. Yes.

Q. Now, let me ask you about your automobile business. Do you know your loss ratio in the State of Missouri for your 3-year period on automobile business?

A. No, I haven't that with me right now.

Q. Do you know, as a matter of fact, without being able to give, perhaps, the definite figures, that your loss ratio in the automobile business is extremely high?

Mr. Leahy: Object to that as a conclusion; incompetent and immaterial, and calling for a conclusion.

Mr. Jacobs:

Q. Have you got the figures?

A. Yes.

Q. Can you get them?

A. Yes, sir.

Q. I would like to get them, if you will get them, Mr. Groth. I now call your attention to the Commercial Union Assurance Company. We will leave the California Company and then come back to it later on. I wish you would get some paper, because unless you are—I wish you would get some paper and make the figures, and figure the profits or losses of this company during the 5-year period. Commercial Union Assurance Company. Now, for the years

1917 to 1921, inclusive, what are your premiums—your premiums for 1917 for that company? Now, I don't want your earned premiums. I want your net premiums received.

[fol. 721] Mr. Folonie: Total net.

Mr. Jacobs: Total net premiums received.

A. $345,638.

Q. That is your total net premiums received?

A. Yes.

Q. Does that include your reinsurance?

A. Includes reinsurance assumed, and a deduction of reinsurance ceded.

Q. Well, can you give me a figure entirely free of reinsurance?

Mr. Folonie: That would not be the total net. That would be the direct.

The Referee: Gross total net—would that cover it?

Mr. Jacobs: That would include reinsurance premiums.

The Referee: Yes, it would.

Mr. Jacobs:

Q. What have you got there on your figure for total net premiums?

A. $345,638.

Q. Now, I am showing you your annual underwriting report for the year 1917?

A. Yes.

Q. Now, are these figures right here representative on your report of your net premiums received?

A. Yes.

Q. Well, how much is that?

A. $308,368.

Q. Well, that is the figure you want down there then, isn't it?

Mr. Folonie: Objected to as assuming the witness wants that. He doesn't want anything. He is just purporting to answer counsel's question.

[fol. 722] Mr. Jacobs:

Q. Those are figures on your own report to the State of Missouri for that year, aren't they?

A. Yes, but——

Q. (Interrupting.) But what?

A. Well, I was just trying to get a proper explanation of why 1917 would be different than 1918, 1920 and 1921.

Mr. Folonie: Look on the blank.

Mr. Jacobs: Let's not bother about those until we get to them. Let's get the figures on 1917 now, and we will get 1918 when we get to it. Give me the total net premiums for 1917. What are they?

Mr. Folonie: Object to total net premiums, because it doesn't include whether he asked for direct or gross net or total net, or whether he chooses to include or exclude assumed reinsurance, or whether ceded reinsurance is to be taken into account; and therefore, misleading.

Mr. Jacobs: I will state that his company gave to Missouri in the underwriting experience—those figures.

Mr. Folonie: Object to that because concededly wrong.

The Referee: Overruled.

Mr. Jacobs:

Q. Will you explain wherein the figures you just read off of your report of $308,000 is wrong? Where is it wrong? The premiums for that year, as reported, and if it is wrong, why is it wrong?

A. The underwriting experience figures for 1917 were asked for on the basis of the same figures as the annual statement, which did not take into consideration the ceded reinsurance.

Q. Does it include any reinsurance?

[fol. 723] Mr. Leahy: The statement speaks for itself, we submit, Your Honor.

Mr. Jacobs: Yes, but this witness got it up.

The Referee: This is a preliminary question. Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Explanatory, anyway. If he says they are wrong, we ought to know why.

The Witness: These figures are correct, as submitted on the annual statement of 1917.

Mr. Jacobs:

Q. Well, are they correct on this underwriting report which you gave to Missouri?

A. Yes.

Q. Well, then, the figures are right, aren't they?

A. They are right according to the requirements at the time.

Q. Well, are they right?

A. Yes.

Q. Well, put them down, please. I don't know of any reason for an argument over a matter when you say they are right, and they are your own figures.

Mr. Folonie: We object to arguing with the witness.

Mr. Leahy: No, we object to admonishing the witness.

The Referee: Sustained.

(To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

[fol. 724] Mr. Jacobs:

Q. What other earnings did you have besides that for 1917?

Mr. Folonie: Objected to as assuming there were any other earnings that year, if the court please.

Mr. Jacobs: Well, if there isn't, the witness will say so, Your Honor. I am offering him his report on it.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. What other earnings, if any, did you have, Mr. Groth?

A. As submitted on the annual statement for 1917, I had the interest earned on the—allocated interest earned on unearned premiums of $9,145.

Q. What else did you have?

A. Interest earned on capital stock.

Q. Give them all to us.

A. $5,020.

Q. What were your total other earnings besides these premiums, for that year?

A. There weren't any.

Q. You had no earnings?

A. No other earnings, to my knowledge.

Q. No earnings at all besides premiums?

A. Besides those I just specified.

Q. That's what I say. Put them down as "other earnings"—put the figure down.

(Witness complies.)

Q. Now, how much are they?

Mr. Folonie: Objected to as incompetent, irrelevant and immaterial; to go into the question of earnings on capital [fol. 725] and surplus is contrary to the provision of the Fourteenth Amendment to the Constitution of the United States, and contrary to the Constitution of the State of Missouri.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Leahy: And contrary to the statutes of the State of Missouri.

Mr. Jacobs:

Q. Have you got them?

A. I have "Other earnings." Under the subject of "Other earnings," I have interest earned on unearned premiums of Missouri of $9,145.66. I can't verify this figure because that is not my writing. I don't know who put that in there.

Q. Which figure is that?

A. That $5,060.66.

Q. What is that? How about this $5,060.04?

A. That is what I say. I didn't put that in there. I put the $9,000——

Q. (Interrupting.) This one right here (indicating)?

A. No, I did not.

Q. That is interest earned on capital stock and surplus prorated for Missouri?

A. Yes.

Q. Can you give me that figure?

A. We didn't figure it out for that year.

Q. Well, can you figure it for me? Give me the interest earned on capital stock and surplus pro rata for Missouri that year, and see if it is not——

[fol. 726] A. (Interrupting.) I would have to get the 1917 annual statement to figure it out; and I haven't got that right here.

Q. Here it is right here. Here you are, now (handing witness document).

A. Now, the method I adopted in getting that figure for succeeding years, I typed it out here to show you—is that proportion of the total interest and rents shown on line 17, page 2, of the annual statement, that Missouri net premiums bear to the total net premiums on line 7, page 2. That is the way we get the unearned premium on capital stock—I mean, the interest earned on capital stock for the succeeding years.

Q. I just want to get what your figures show.

A. I am trying to answer this one. We didn't answer that question in 1917.

Q. Show me what it is now. I want interest earned on capital stock and surplus pro rated for Missouri.

A. I will find it out for you. (Witness calculates.) 4.3 per cent. And this 4.3 per cent is figured——

Q. (Interrupting.) Tell me the amount in dollars and cents.

Mr. Folonie: We object to permitting the witness to answer, on the ground that if the statutes should be so construed as to permit charging against the plaintiffs such earnings, then the same is in contravention of their rights as guaranteed by the Fourteenth Amendment of the Federal Constitution.

The Referee: Overruled.

Mr. Folonie: We preserve an exception.

[fol. 727] (To which action and ruling of the referee the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I got about $17,108 on that.

Mr. Jacobs:

Q. Is that your figure?

A. Yes, but—where is that exhibit there that you showed me just now?

Q. You mean total or just that one item? I was cheating myself then. I have only got $5,060 for that item.

A. Well, now, just a moment. Wait a minute. I am cheating myself on that.

Q. I am cheating you fairer than you are cheating yourself, Mr. Groth.

A. Well, now, I don't get anywhere on this now. I am trying to reconcile this figure here that someone stuck in there of $5,060. I want to qualify the answer on that. In the succeeding years, I have taken, as per instructions from our New York office, the net premiums that the entire United States bear to the net premiums of Missouri, and taken that proportion of the amount entered under line 17 on this page called "Gross interest and rent." $397,858.

Q. Now, what was the relation of the Missouri business to total business?

A. 4.3 per cent of that. Of the Missouri business—of that figure, there is about $17,108. Now, in the case of the Commercial Union, we deducted from the above result, all real estate expenses on line 22. I will have to take 4.3 per cent of that; or $50,423.

[fol. 728] Q. What is that line 22?

A. Covers real estate expenses repairs, expense and taxes thereon. Just to offset the income on the gross interest and rents.

Q. You want to deduct that $50,000 from your $353,000, shouldn't you?

A. Yes. This will come out the same. $21,681.

Q. You have got $21,000, and you only had $50,000 to start with, and you are taking 4.3 per cent of it?

Mr. Folonie: Move your decimal over one point.

A. $14,940.

Mr. Jacobs: We still seem to be way below that year on what you are claiming as further earnings.

A. I don't know where this figure came from this $5,060.

Mr. Jacobs: I don't either. Put on whatever they are. If it is $14,000 instead of $5,000, let's have it.

Mr. Folonie: We object to putting down what they are because he has already said he don't know.

The Referee: He may announce the result of his calculation.

Mr. Jacobs:

Q. As I understand it, you took from your annual statement report to the State of Missouri for that year, 1917, for this particular company about which we are now inquiring, the Commercial Union Assurance Company, the earnings on its capital stock and surplus, didn't you?

A. Yes.

Q. And then you took the percentage which the total Missouri premium business bore to the total business of the United States, didn't you?

[fol. 729] Mr. Folonie:

Q. Did you take gross or net?

A. I took net United States premiums, and the net Missouri premiums, and that ratio, which is 4.3 per cent, I took that off of line 17 as exhibited on the annual statement, page 2, entitled "Gross interest and rents."

Mr. Jacobs:

Q. Yes, and then you deducted under line 22 the expenses?

A. I deducted the Missouri proportion of the expenses.

Q. And deducted that from the amount of the interest?

A. Yes, that is it. Yes.

Q. And then your result was that?

A. $14,940.

Q. Which would be by the amount of earnings on your capital stock and surplus allocated to Missouri, and based upon the relationship of its business to the total business of your company, is that right — not?

A. I couldn't say that was earnings on capital stock. I would say that was the earnings of interest and rent received.

Q. All right. Interest rents—rent received.
A. Yes.

Mr. Leahy: Those are the gross rents.

The Witness: Gross rents and interest received, and aginst that, I offset the expenses attached to that income-bearing property on which repairs and taxes amount to $500,423, and the Missouri proportion of that 4.3, is about $2,168, leaving a net of $14,940.

Mr. Jacobs:

Q. Now, put down there under "Other income" then.

Mr. Folonie: Is that premium or net profits?

[fol. 730] The Witness: That would be net income on other earnings.

Mr. Jacobs:

Q. Put that down, then, under your heading "Other earnings." You have two items now; this item and another.

Mr. Folonie: We object to his putting it down, because it would be incompetent to testify to it after he has put it down.

Mr. Jacobs:

Q. Have you got the two items down under "Other earnings" for the year 1917?
A. Yes, sir.
Q. Now, head the next column "Losses." Now, what were your paid losses for 1917? You have got your paid losses for 1917—Commercial Union Assurance Company, we are inquiring about?
A. Yes.
Q. What are they, please? Paid losses?
A. $175,143.
Q. All right. Have you got your total paid expenses—put that under a heading here?
A. Losses, yes.
Q. Now, not expenses, your total paid expenses for that year.
A. Yes, $62,460.

Q. Now, 1918. Your premiums. What have you got on there for 1918?

A. $313,219.66.

Q. For your premiums for 1918?

A. Yes, sir.

Q. What does that include?

A. That includes assumed reinsurance, and ceded reinsurance deducted.

Q. Premiums received, eh? Your total net premiums received?

A. Yes, sir; total gross net.

[fol. 731] George Groth, recalled to the stand for further cross-examination, having been previously sworn testified as follows:

Cross-examination continued by Mr. Jacobs:

Q. Mr. Groth, before going along with the matter we were discussing when we adjourned yesterday evening I want to ask you about one matter about which you testified yesterday afternoon, namely, what did you say about your annual statement reports carrying the federal premium tax as a separate item in your annual statement report? Is that what you testified to yesterday?

A. Yes.

Q. Now, I am going to get you to look at this annual statement report of yours for the year 1920, and indicate whether or not you carried there a separate item in the shape of a federal premium tax on state business.

A. Is this the California Company?

Q. No, that is the Commercial Union.

A. In this particular year our head office seems not to have itemized that 1 per cent federal premium tax as a special item?

Q. Now, what appears there? You are now holding your annual statement for the year 1920 of the Commercial Union Assurance Company, aren't you?

A. Yes, sir.

[fol. 732] Q. Statement made to Missouri?

A. Yes.

Q. Now, what does your item 14 on page 3 show?

A. Not having made this particular figure up myself, I can't answer that.

Q. You know what it shows.

A. It reads "Federal taxes."

Q. What does it say after that?

A. "Divided into fire and marine. Fire, $261,470.40. Marine and inland, $158,708.68."

Q. Now, are those the taxes for the whole country?

A. To the best of my knowledge, they are.

Q. Or are those the taxes which were allocated to Missouri?

A. I did not allocate these to Missouri in my report to you.

Q. Well, that is the company's report to Missouri, isn't it? That you have before you?

A. These are the taxes for the entire country.

Q. And that is a report which your company made to Missouri, isn't it, which you have before you, and from which you are reading?

A. Yes, sir.

Q. Now, there is no separation of that item, then, into its parts, including a federal premium tax, is there?

A. No, sir.

Q. It is a one gross sum under those two separate headings and aggregates $420,179, doesn't it?

A. Yes, sir.

Q. Now, was a direct charge made that year to Missouri on that item—on any of these items?

A. In that report that I read into the record the other day, the federal taxes of 1 per cent directly applicable to the State of Missouri were only shown.

[fol. 733] Q. Now, let's see, this amount that you have just read, according to your understanding of your company's report, is a report on all federal taxes, isn't it?

A. Yes, sir.

Q. Now, I am going to get you to look at your underwriting experience for 1920, which your company reported to the State of Missouri during that same year, and ask you if under item 16 of that report, this same item of federal taxes, $420,179, does not appear?

A. Yes, sir.

Q. And if that was not allocated to Missouri, and if so, in what sum?

A. As I stated to you yesterday, in the year 1929, the whole total was allocated to Missouri.

Q. And how much was charged against Missouri out of the $420,179?

A. $7,899.37.

Mr. Folonie: Allocated by experience report.

The Witness: As submitted to the State of Missouri.

Mr. Jacobs:

Q. Look on item 4 and see if you didn't charge in addition, as federal gross premium tax, as a direct charge, $2,564.18 more?

A. Yes, sir.

Q. Now, that sum of money is included in that $420,179 which was allocated to Missouri, wasn't it?

A. Yes, sir.

Q. So, in that instance, Missouri was charged in that report with a direct tax on this premium tax, wasn't it?

A. Yes.

[fol. 734] Mr. Folonie: We object to any conclusion that the underwriting experience blank charges Missouri anything.

Mr. Jacobs: I use the term not as a debit or credit term, but as——

Mr. Folonie (interrupting): With that understanding, we don't object. The point I had in mind is that the tax statement on which taxes are paid is a different blank entirely, and that is creative of an obligation to the State of Missouri by way of taxes, for example, and this is a report on which no charge by the State of Missouri by way of fees or taxes is predicated. With counsel's explanation as to the use of his term, I think the force of my objection is abated.

Mr. Jacobs:

Q. Now, this sum under item 4 of $2,564.18 was charged against the State of Missouri as a direct expense, wasn't it?

A. Yes, sir.

Q. And that is the Federal gross premium tax?

A. Yes, sir.

Q. Then that same money was included in this other item of $420,000, and allocated to Missouri again, wasn't it?

A. Yes, sir; for that year.

Q. Now, in addition to that, this item of Federal gross premium tax for all the other states, was included in this $420,000, and allocated to Missouri again, wasn't it—I mean that same item?

A. Yes, sir. I might add in my other answer to that, that it was done under a misunderstanding.

Q. When you were making these reports to the State of Missouri you made three reports, didn't you—annual reports? Did you or didn't you, and if so, what were they? [fol. 735] A. We made the regular annual statement report, which included the operations of the company throughout the United States; and we made an underwriting experience report. Do you want me to mention all the subsidiary reports we made?

Q. And you made a tax report?

A. Yes.

Q. Now, what was your annual statement report—you say that covered the operations of your company throughout the country—or your company's? Is that right?

A. Yes, sir.

Q. And included your banking operations?

A. Yes, sir.

Q. Your investment operations?

A. Yes, sir.

Q. In fact, included everything, didn't it?

A. Yes, sir.

Q. Now, your underwriting report, your report of underwriting experience for the year, what did that include?

A. It included the premium report for—by classes.

Q. In other words, to make it short, did it include strictly the underwriting experience of your company for that year in the State of Missouri?

A. Yes, sir.

Q. Now, in figuring and in computing your profits and losses, whichever they may have been, as you have heretofore testified in behalf of the plaintiffs, you limited your

calculations solely to the underwriting experience in the State of Missouri, didn't you?

A. Yes, sir.

[fol. 736] Q. And you paid no attention to your reports covering other operations over the United States in the way of banking and investments and stuff of that kind?

A. No, sir.

Q. In other words, you understood, according to your method of calculation, Mr. Groth, that the underwriting experience report was the basis of rate-making in the State of Missouri, didn't you?

Mr. Hogsett: Object to that as wholly immaterial what this witness supposed.

Mr. Jacobs: I didn't ask him what he supposed.

The Referee: "Understood," is the word used. Objection overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Answer the question, Mr. Groth.

A. I can't answer that from my own knowledge.

Mr. Jacobs:

Q. Not from your own knowledge. But you have been supplied with certain knowledge by which you limited your calculations as to profit or expenses in the State of Missouri to strictly underwriting experience haven't you; wherever you got that knowledge?

A. Yes.

Q. And it is a fact, isn't it, that it was the underwriting experience which you understood was the basis for rate-making in the State of Missouri, and not active operations of your company along other lines in the United States?

[fol. 737] Mr. Folonie: Objected to, whether he so understood or not, as immaterial.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I have no knowledge to that effect.

Mr. Jacobs:

Q. Then did you limit your calculations to strictly underwriting experience when you calculated profit and loss for this court in your testimony in chief—if you have no such understanding?

A. The profit and loss exhibit was not made, on my part, with any idea as to how it would affect the rates one way or the other.

Q. That is not the question I asked you. Read him the question, Mr. Blume.

Mr. Folonie: We respectfully submit he gave the calculations we asked him for.

Mr. Jacobs: Your Honor, the defendant objects to a statement which amounts to an answer for the witness in that fashion, and which didn't call for—which was not an objection but merely a statement to this court.

Mr. Folonie: It does not amount to a suggestion at all. I interrogated the witness in chief as to certain facts, which he gave, and he couldn't conceivably have given any other facts relating to banking profits, because I asked him nothing about them.

Mr. Jacobs: Yes, and he came in here with prepared tabulations covering just that situation.

The Referee: It would probably be better to permit the witness, then, to state that fact.

[fol. 738] Mr. Folonie: He may not state it as well as I do, if the court please.

The Referee: That is undoubtedly true. The objection of Mr. Jacobs is sustained in this instance.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Now, will you read him the question again, Mr. Blume?

(Question read by the reporter.)

A. I was given to understand that was the way to make a profit and loss statement.

Q. Now, who gave you that understanding?

A. I made it in line with the exhibits other companies were making.

Q. In other words, the companies got together and agreed upon a plan of calculation for this testimony, is that what you say?

A. In a manner of speaking, yes.

Q. Now, before you had—before this understanding was had among the various companies, what was your idea about the proper way to calculate? Did you think the same thing before?

A. In regard to how it would affect rate-making?

Q. No. In regard to making a proper calculation of the experience of your companies in the State of Missouri. What was your idea before you all met together?

Mr. Folonie: You mean respecting profit and loss?

Mr. Jacobs: Yes. Experience.

[fol. 739] Mr. Jacobs:

Q. Your company's experience?

A. My idea was it should be based on the underwriting experience.

Q. Strictly; is that right?

A. No, not necessarily.

Q. Now, what should be taken, according to your ideas, into consideration in arriving at the experience of your company in addition to underwriting experience?

Mr. Folonie: We object to it as incompetent and invasive of the court's power to itself determine what is the proper basis on which to predicate experience for the purpose of this lawsuit, under proper legal rules and the statutes and their reasonable construction, although the witness might construe the statutes erroneously or the rules of law applicable thereto erroneously, his understanding could in no wise affect the rule which the court would be bound ultimately to adopt.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Why, I had no personal opinion that way at all.

Mr. Jacobs:

Q. Well, don't you know anything about it?

A. Well, I would say, from a disinterested point of view, I take the company's experience both as to underwriting and, to a certain extent, their other operations that they may have throughout the country as regards an investment, and so forth.

Q. In order to arrive at their true experience over a given period in the State of Missouri, is that what you mean?

[fol. 740] Mr. Folonie: We object to permitting testimony as to the corporate experience, whereas the present suit is predicated entirely upon the propriety of rates in Missouri, which is an entirely different question.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. I would say further, that as far as——

Mr. Jacobs (interrupting): Read the question to him.

(Question read by the reporter.)

A. (Continuing:) —as affecting any one particular state, I would say the underwriting experience would stand as an experience only.

Q. What do you mean by your answer to me the last question before this one, when you said, according to your judgment, there should be taken into consideration the underwriting experience in order to arrive at the experience of your company in the State of Missouri, and these operations of the company over the country generally—what did you mean by that answer?

Mr. Folonie: We object to that, because that is not a correct statement of what he said.

Mr. Jacobs: All right. Read his answer, Mr. Blume.

Mr. Folonie: We object to it, because the record will show for itself what he said. We object to the form of the question as pretending to incorporate what the witness [fol. 741] said previously instead of propounding a new query to the witness.

The Referee: Read the question originally propounded, and the answer.

(Question and answer so referred to read by the reporter.)

Mr. Folonie: Now, we want to make clear that the question as propounded is necessarily confusing because there involves the possibilities of inquiry as to corporate profit and loss; there is involved the question of the factors to be taken into consideration in determining the solvency or insolvency, and the factors to be taken into account in determining a rate in a particular state, all of which are different inquiries and would require different answers; and the gun-shot question as propounded to the witness does not indicate the purpose for which the information is to be used when acquired, and so cannot help but be misleading, any answer he would give to the question.

The Referee: Now, read the pending question, Mr. Blume, please.

(Question read by the reporter.)

The Referee: Objection overruled.

(To which action and ruling of the Referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Well, I mean as pertaining to any one particular state. I would not take the investment result into consideration because conditions applying—are different from one state than another.

[fol. 742] Mr. Jacobs:

Q. What do you mean by that?

A. Well, the company may be under heavier expense in one state than another.

Q. That wouldn't have anything to do with your banking investment operations at the home office, would it?

A. No, not necessarily.

Q. And the moneys which are taken out of a state ultimately reach your home office, don't they?

A. Yes, sir.

Mr. Folonie: Objected to as assuming any money is taken out of the State of Missouri, because contrary to the facts shown by the evidence.

The Referee: Overruled.

(To which action and ruling of the Referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. And the investment and banking operations, as you say, are made at the home office, aren't they?

A. Yes, sir.

Q. And you have a way of figuring, for example, when you arrive at earned premiums, upon which you base your calculations, you have a way of figuring and proportioning conditions to each state in this way: You take the premium volume or business for Missouri, for example, and compare it to the total premium business of the United States, don't you?

A. Yes, sir.

Q. And you arrive at the proportion, and you use that as a basis for arriving at the earned premiums for a given [fol. 743] period for the State of Missouri, don't you?

A. Yes, sir.

Q. Now, you could do the same thing, couldn't you, in arriving at the proportion that Missouri was entitled to, of earnings, interest earnings or profits from investments made by the home office in the United States—couldn't you?

A. Yes, we could.

Q. Now, do you say now, and do you still insist, that in order to arrive at the experience in Missouri, you would take—that you would not take into consideration its earnings, then, outside of underwriting experience?

A. Yes.

Q. You insist that that is a fact?

A. Yes.

Q. Now, is the source of all the moneys that go to the home office, the various states of the Union—all the states of the Union?

A. All the states of the Union report to the home office, yes.

Q. And they furnish the source of the revenue—all the states together, to the home office, don't they?

A. They do.

Q. And, as you testified yesterday, all the expenses are allocated to the various states, including Missouri?

A. Yes.

Q. Do you think that in arriving—as an accountant, speaking as an accountant—under all those circumstances, in order to arrive at the experience in the State of Missouri, that you should entirely ignore everything except strictly underwriting experience?

A. Well, under certain conditions, I would, yes; because [fol. 744] the company may be more heavily invested in one state than another, and their investments may come from some other source than such a state as Missouri.

Q. That would be your only reason for entirely excluding it?

A. Yes.

Q. Your company has no investment at all in the State of Missouri, has it?

A. To my knowledge, it has not.

Q. None of your five companies, to your knowledge, have, have they?

A. Not to my knowledge.

Q. They might have a great amount of premium, say, outside of the State of Missouri, because if there was any at all, it would go out of the state—it is not invested within the state, is it?

A. Not to my knowledge.

Q. But it would be invested in some other state, perhaps in New York, wouldn't it?

A. It might, yes.

Q. Do you feel that under those circumstances, speaking as an accountant, and arriving at your calculations, that since your companies invest no part of their premiums in the State of Missouri but take them out of the state and invest them in other states, thereby having a heavier investment in one state than another, that on that account you should not consider these in arriving at your experience in Missouri?

Mr. Folonie: We object to interrogating the witness as to his feelings on the matter, as incompetent and imma-

terial, and because if his feelings were such as to go contrary to the constitutional rights of his principal, and if his feelings were so construed as to be the equivalent of [fol. 745] the statutory construction contended for by counsel, then it would operate to deprive the plaintiff of its rights under the Fourteenth Amendment to the Constitution; and because the inquiry of counsel assumes that the capital or the surplus were in part derived from the State of Missouri and non constat, the capital stock and the surplus may have been provided by funds of the English stockholders of the company interrogated about, and the proportion derived from Missouri, so far as this evidence shows, may be nothing at all.

Mr. Jacobs: Well, that is not the question at all.

The Referee: I think I understand the question. The question uses the word "feels" in the sense of "think" or "judge." The object is overruled.

(To which action and ruling of the referee, the plaintiffs, by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Do you recall the question?

A. Yes: No, I think that Missouri should not be credited with that investment return.

Mr. Jacobs:

Q. In spite of the conditions we assume in that question?

A. Yes, sir.

Q. Well, then, your position is flatly and definitely that the only way to arrive at the experience in the State of Missouri is to limit yourself strictly to underwriting experience?

A. Yes, sir.

Q. Now, you made three reports to the State of Missouri. One of them was a report made for tax purposes, wasn't it?

A. Yes, sir.

[fol. 746] Q. One of them was a report made called the "annual statement report," which included all your experience over the United States?

A. Yes, sir.

Q. Your investment earnings, your investment losses,

your interest earnings, and everything of that kind, don't it?

A. Yes, sir.

Q. Stuff that was entirely outside of the question, from your standpoint, in the matter of figuring experience in Missouri, wasn't it?

Mr. Folonie: Just a moment. We object to again confusing a statement designed to establish solvency with a standard by which rates shall be charged; and the question of the assets of the company and their nature, and whether it had stocks or bonds, and how many they had, and the nature of its income, and whether they were speculative, and the quantity thereof, are all eminently proper to determine the question of whether the business of the plaintiff was conducted in a safe manner and whether it was solvent; and counsel, in his questions, is continually confusing the standards by which solvency may be measured and the standard by which rates may be judged; and we, therefore, object to the question as now propounded as confusing and misleading.

The Referee: The court will take judicial notice of the purpose for which these reports are made, because that purpose is disclosed in the statute requiring the report, and the rules of the department. The objection is overruled.

(To which action and ruling of the referee, the plaintiff by counsel then and there at the time duly excepted and still excepts.)

[fol. 747] Mr. Jacobs: Read the question.

(Question read by the reporter.)

Mr. Jacobs:

Q. Is that right?

A. Would you mind reading that last sentence again, please?

(Question again read by the reporter.)

A. That, I presume—the question means that any investments earned by the company outside of Missouri are not applicable to Missouri; is that what you mean? Is that

what you want me to answer? I don't quite get that question.

Mr. Jacobs:

Q. What I mean is this: That you made your annual statement report and in it there was included a report on all your outside activities?

A. Yes.

Q. Banking investment, interest earnings, and stuff of that character?

A. Yes.

Q. Now, that, according to your testimony, as I understand it, concerning the experience of your companies in Missouri, was entirely outside of consideration?

A. Yes.

Q. Now, the underwriting experience report was limited to just what it says: Underwriting experience. Wasn't it?

A. Yes, sir.

Q. And that is the report containing your underwriting experience alone in the state?

A. Yes.

Mr. Folonie: We object to that, if the court please, because the underwriting blank also asks for earnings on unearned premiums, and it asks for investment profits, and down at the bottom of the blank, it does ask for things other than underwriting experience.

[fol. 748] Mr. Jacobs: Now, of course, if Your Honor please, this witness ought to be able to get along pretty well without constant instruction, such as he is receiving. He has answered that question and said "yes." He has been instructed on every question I have asked him in the last four or five questions. Now, I think counsel for plaintiff, however, if he wants to testify in this case, that he ought to go on the stand. There hasn't been a question asked this witness but what he has been given the full information concerning the answer in this man's objection.

Mr. Folonie: There has been scarcely a question asked which has not been consciously misleading.

Mr. Jacobs: And the court has overruled you on every one of them.

Mr. Folonie: It has been misleading in stating the things

required by that blank, and what its contents are. I don't mean the answers, but the inquires in the blank itself. It does not add anything to say it calls for this and that when he hasn't the blank before him, and when it does contain other matters.

The Referee: I assume that these blanks referred to are all in evidence, or will be put in evidence. Certainly, they are here, and of course, are the best evidence of what they call for. To that extent, it would save time and avoid possible confusion to frame the question more definitely. On the other hand, in making objections, it is, of course, not the intention and ought not be the contention of counsel to assist the witness in framing an answer. What is the pending question?

(Question and answer read by the reporter.)

[fol. 749] Mr. Folonie: I wish my objection considered prior to the answer.

The Referee: It will be so considered; and overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Now, the one report then that you make which dealt practically in its entirety with the matter of underwriting experience, was the report designated as "underwriting experience of your companies by classes"?

A. Yes.

Q. That's right, isn't it?

A. Yes.

Q. Did you use those reports in arriving at the tabulations you testified to here yesterday?

A. Some of them.

Q. And they were wrong, weren't they?

A. Some of them were.

Q. They were duplications of expenses, of expense accounts, weren't they?

A. Yes, sir.

Q. Were they, or do you say now, indefensible—the

underwriting reports which you made to the State of Missouri?

Mr. Hogsett: Objected to as calling for a conclusion of the witness and a characterization by the witness.

Mr. Jacobs: Well, I will withdraw that question.

Mr. Jacobs:

Q. Now, I am going to get you to look at your report of underwriting experience by classes for 1917.

Mr. Folonie: What company in this?

[fol. 750] Q. (Continuing:) For the Commercial Union Assurance Company, Ltd. Is that it? The instrument I am handing you now?

A. Yes, sir.

Q. Now, have you got some—I will get you to look at these figures, and see if you and I agree with these figures upon this yellow paper that I have—see if they are correct. Will you look at the column entitled "Premiums" on the yellow paper which I am holding, and see from your annual underwriting experience report what the premiums for 1917 were?

A. $308,367.

Q. Is that correct on this yellow paper I have?

A. Yes, sir.

Q. Now, what were your other earnings according to the report, from the State of Missouri?

Mr. Folonie: I assume the question relates to the correctness, as the same is set out in the underwriting experience blank?

Mr. Jacobs: Yes. Of those companies reported to the state.

The Referee: Yes.

Mr. Jacobs:

Q. Now, what are your other earnings, according to your report to Missouri for that year?

Mr. Folonie: Objected to on the ground that it is incompetent and immaterial, and we renew our objection under the Constitution of the United States and the Con-

stitution of Missouri as previously stated to the court in detail.

The Referee: Overruled.

[fol. 751] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Interest earned on unearned premiums on Missouri business, $9,145.66?

Mr. Jacobs:

Q. Any other?

A. And there are entered thereon—a figure there which I did not put there myself, "Interest earned"——

Mr. Folonie: Just a minute. Read the printed part, and then I wish to make an objection.

The Witness (reading): "Interest earned on capital stock and surplus pro rated for Missouri."

Mr. Folonie: Now, we object to the witness stating the figure opposite the same if he says he did not put it on there.

Mr. Jacobs:

Q. Well, can you calculate it—that figure?

A. Yes.

Q. Well, we will come back to that just as soon as we get that, then. Now, what were you paid losses for that year?

Mr. Folonie: I would like to ask the witness at this time: First, in any case there, whether you filled in a figure which has been changed, or whether you left it blank?

A. I left the entry blank, and it was filled in subsequently.

Mr Jacobs:

Q. Where is the figure?

A. This (indicating).

Q. Those are the same ones we were talking about yesterday?

A. Yes.

[fol. 752] Q. What are your paid losses, now, according to your report?

A. $173,638.

Q. What were your paid expenses in the same year, according to your report?

A. $68,304.07.

Q. Now, will you—how can you arrive at a calculation on those figures of $5,000, being earnings on capital stock and surplus? Did you figure those yesterday? I think you did, didn't you? You figured it about $14,000 didn't you, instead of $5,000?

A. Yes, $12,000.

Q. Instead of being $5,000, those earnings amount to $12,000 or $14,000 as I remember it?

A. I have got these figures here as $14,940.

Q. Instead of what we gave as $5,000 odd dollars as the earnings for Missouri from those sources?

A. Yes. When we made this report originally to your state, why, we left the item blank.

Q. Although the report called for it?

A. Yes.

Q. And it develops now that for that year it was $14,000 on that item?

A. Figured on a basis which we think is a proper method of calculating—approximately.

Q. All right. Now, I expect you are going to have to make the figures, because you have now increased my figures on those earnings more than double. So I expect you are going to have to make your own column.

Mr. Hogsett: If the court please, we object to counsel for the defendant calling on the witness to do his calculations for him as improper. We don't object to the figures being offered in evidence, but the matter of computing a result therefrom is not for the witness to do; simply a waste [fol. 753] of time and an improper question to be asked of the witness.

The Referee: Oh, I think it will probably expedite matters if the witness will be kind enough to make a calculation, which I assume is a brief one. Objection overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Now, what are you writing down there, Mr. Groth?
A. I am taking your interest earnings.
Q. Oh. The figures we were talking about?
A. Yes.
Q. The total of your earnings would be $24,085?
A. Yes, $24,085.
Q. All right. Put down right here, then, on your blank paper—make a heading first, right there—1914—1917, excuse me. And then "Premiums," "Other Earnings," "Losses," "Expenses." Now, let's see, according to the figures we took from the underwriting, the premiums were $308,367, weren't they?
A. Yes.
Q. Other earnings were how much?
A. $24,085.
Q. $24,085. And "Paid losses" $173,638, wasn't it? And "Paid expenses" $68,304. Now, for the year 1918—if you are through with that paper now. Now, give me 1918.

Mr. McGee: Now, will you take this report of the underwriting experience of your company for Missouri for 1918? I have handed you an instrument there; is it the report of [fol. 754] your company, The Commercial Union Assurance Company, of underwriting experience by classes for 1918?
A. It is.
Q. All right. What were your premiums received for that year, according to your report?
A. $172,864.
Q. All right. Will you put that down on your list there. What were your other earnings for that year?
A. $13,383.
Q. All right.

Mr. Folonie: Same objection to that as we made heretofore respecting earnings.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. What were paid losses that year?

A. I wish to correct that. That was $12,383.

Q. All right. Now, what were your paid losses that year, as shown by your underwriting report to the State of Missouri?

A. $78,033.

Q. All right. What were your paid expenses for that year?

A. $60,764.

Q. All right. Now, will you give me that report? Now, give me 1919, Mr. McGee. I am now handing you, Mr. Groth, your annual underwriting experience by classes report to the State of Missouri of the Commercial Union Assurance Company for 1919. Will you look at it and see if it is the instrument I have just described?

A. It is.

[fol. 755] Q. Now, look upon that instrument and see what your premiums received were for 1919, according to that report?

A. $207,098.

Q. All right. What were your other earnings?

A. $21,601.

Mr. Folonie: Same objection to the earnings question as we made previously.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. What were your paid losses?

A. $79,473.

Q. What were your paid expenses?

A. $82,088.

Q. All right. Now, I am handing you the annual underwriting experience by classes of the Commercial Union Assurance Company made to the State of Missouri for the year 1920. Is the instrument I hand you the one I just described?

A. Yes, sir.

Q. What were your premiums received, according to that report, for 1920?

A. $258,222.

Q. What were your other earnings that year?

A. $16,386.

Mr. Folonie: Same objection to other earnings.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted, and still except.)

Mr. Jacobs:

Q. What were your paid losses?

A. $93,142.

[fol. 756] Q. What were your paid expenses?

A. $99,524.

Q. I am now handing you the annual underwriting experience by classes of the Commercial Union Assurance Company for the year 1921 as made to the State of Missouri. Is that instrument which I hand you the one I just described?

A. It is.

Q. I wish you would look at it and state what were your premiums received for that year?

Mr. Folonie: What year is this now?

Mr. Jacobs: 1921.

A. $205,260.

Q. And what were your other earnings?

Mr. Folonie: The same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $18,677.

Q. What were your paid losses?

A. $130,627.

Q. Your paid expenses, Mr. Groth?

A. Somebody has changed some figures here. I am just trying to find out where they came from.

Q. Where is that?

A. This figure here. What is that?

Q. Well, you can total them.

Mr. Folonie: I have your copy of it here, Mr. Groth, and if counsel doesn't object, it may help you finding it.

[fol. 757] Mr. Jacobs:

Q. These figures that constitute the constituent items are in your figures, aren't they?

A. Yes.

Q. All right, total them.

A. $108,306.

Q. Now, will you total those various columns?

(Witness complies.)

Q. Now, have you them totaled?

A. Yes, sir.

Q. Will you add together now your premiums and other earnings?

A. Can I check myself on that, or can I check with you on that?

Q. Well, they won't agree because I only had other earnings for 1917 as $14,000, and you have got them $24,000?

A. Just let me run over these once more.

Q. Now, did you add the other earnings and premiums together?

A. Yes, I will do it.

(Witness makes computation.)

Q. Now, will you add the paid losses and expenses together?

Mr. Folonie: For what years? All these years?

Mr. Jacobs: Yes. This covers the 5 year period.

The Witness: Yes, sir.

Mr. Jacobs:

Q. Now, will you tell the court what percentage of the business done for the entire country for those five years of

this company, was done in the State of Missouri? Can you tell from one of your reports?

A. For a 5-year period?

Q. Yes. See if it was about 2 per cent?

A. I haven't got this as a 5-year period, because my expenses were all figured, including this 1922, but according [fol. 758] to the various years it would average a little better than 2 per cent, I would say.

Q. About 2 per cent?

A. Yes, I would say 2 per cent.

Q. Now, what is the deposit capital of your company in the United States?

Mr. Hogsett: Day by day, or year by year?

Mr. Jacobs: Day by day.

Q. Million dollars, isn't it?

A. I don't know what it was over a period of five years. The annual report would show that.

Q. All right. I will have you look at the annual report which I think you will find was 1 million dollars for each year of the five years. Here is your annual statement report of this company for 1917. Does that show 1 million dollars?

A. Yes, it does.

Q. All right. That is for 1917; 1 million dollars. Now, here is your annual statement report for this company for 1918. Will you see if this likewise is a million dollars (exhibit document to witness).

A. Yes, sir; it is.

Q. Will you look at your underwriting statement report of this company for 1919, and see whether that was likewise a million dollars (exhibiting document)?

A. Yes, sir; it is.

Q. Now, look at your annual statement report of this company for the year 1920, and see if that also was a million dollars (exhibiting document)?

A. Yes, sir; it is.

[fol. 759] Q. And your annual statement report for 1921 and see what that figure is (exhibiting document)?

A. $1,020,000.

Q. Now, those added together, amount to $5,020,000?

A. Yes, sir.

Q. Will you take 2 per cent of that?

A. $100,400.

Q. Two per cent, you say, is about the proportion of business done by the State of Missouri to the total business of the United States for that period?

A. Yes, sir.

Q. And that amounts to $100,000 and what?

A. $100,400.

Q. Now, what is the difference between the amounts of premiums received and other earnings which you have there for that 5-year period, and the amount of paid losses and paid expenses which you have for that period?

Mr. Folonie: Now, we object, if the Court please, to permitting the answer, and in connection with our objection, we offer in evidence the written instructions contained on each of these blanks, if the court will permit me to make that offer at this time, as it is necessary to make my objection properly to the court.

Mr. Jacobs: Which blanks do you refer to?

Mr. Folonie: The underwriting experience blanks. On 1917, I read the printed instructions there contained in part: "This report must be made on net premiums and net losses paid. By net premiums and losses is meant pre- [fol. 760] miums and losses less return premiums, and reinsurance in companies authorized to do business in Missouri. No other deductions should be made."

In 1918, 1920 and 1921, the instructions read the same, so far as that direction is concerned—I mean those years are the same, and read as follows: "Report gross direct business written, less only cancellations; gross direct premiums received, less only returned premiums; gross direct losses paid, less only salvage, on each class as indicated; reinsurance either ceded or assumed should be disregarded entirely, except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company, then such assumed reinsurance should be reported."

Mr. Jacobs: Is that for 1918?

Mr. Folonie: It is the same—all of them subsequent to——

Mr. Jacobs (interrupting): Well, there is some difference on that.

Mr. Folonie: Now, our objection, if the Court please, is that in addition to the——

The Referee: Just a moment, there is no objection to the offer of proof?

Mr. Jacobs: Yes, I want to make an objection to that.

The Referee: Very well.

Mr. Jacobs: That for the year 1918, the blank which he read——

[fol. 761] Mr. Folonie (interrupting): I read from the 1921, I have before me.

Mr. Jacobs: Oh, I thought you were reading from 1918.

Mr. Folonie: Well, I will read 1918, also. 1918—that was 1921. 1918: "Report gross business written, gross premiums received, and gross losses incurred, less cancellations on each item in each class, without deducting reinsurance, or adding reinsurance assumed, except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company, then such assumed reinsurance should be reported."

Mr. Jacobs: Now, the defendant objects to that offer because that blank from which counsel for plaintiff read is not a correct report of the blank as it went out that year, and which was filled out by the plaintiff company in question; that, according to the blank which I hold in my hand for the year 1918, for the company in question, the Commercial Union Assurance Company, it being the underwriting experience for that year of that company, there had been a change in the paragraph just read and the word "gross" as it appears had been scratched out, and the word "net" written in, in the three instances of the first line, and the word "incurred" scratched out and "paid" written in in that first line.

Mr. Folonie: I adopt counsel's suggestion as a correct reading of the 1918 return, if the Court please. I was reading from the blank which I had, which apparently has not been corrected or changed as his his.

[fol. 762] Mr. Jacobs: This was filed by the company.

Mr. Folonie: I say I adopt it.

Mr. Jacobs: Oh, I thought you said you doubt it.

Mr. Folonie: No. 1919, 1920 and 1921 is as follows: "Report gross direct business written, less only cancella-

tions; gross direct premiums received, less only returned premiums; gross direct losses paid, less only salvage, on each class as indicated; reinsurance either ceded or assumed should be disregarded entirely, except that when taking over the entire business of a company in a given territory, if the ceding company has turned over all records to the purchasing company, then such assumed reinsurance should be reported."

Now, our objections, if the Court please, are these: First, that the question purports to inlude earnings on invested apital and to supposed pro rata interest earned on capital stock and surplus, upon the ground that if the statutes of the State of Missouri be so construed and the laws thereof be so applied as to require a payment of such sums or such earnings, that the same is upon an improper basis and that the same deprives the plaintiff of its rights under the Fourteenth Amendment to the Constitution, deprives it of its property without due process of law.

We object, also, further, to the adding of these various items together on the additional ground that as the 1917 figures are upon the basis of taking into account reinsurance in companies authorized to do business in Missouri, and the expenses and losses being the expenses and losses relating to that portion of the company's business, namely, [fol. 763] taking into account such reinsurance in authorized companies, both the assumed and the ceded reinsurance, and adding thereto the premiums in the subsequent years upon only direct writings, and not taking into account assumed and ceded reinsurance, and taking their losses for the year 1917 as the losses upon the direct business, and also taking into account the insurance assumed and ceded, and taking such losses as to the subsequent years only upon the losses upon direct writings, and taking the 1917 expenses upon the net business of the company after giving proper credit and debit for assumed and ceded reinsurance, and adding thereto, the subsequent four years wherein the expenses are only upon the portion of the business consisting of direct writings—that the same, if permitted, would be adding together figures which have no just relation, one to the other, and upon different bases, and that the result when so arrived at—when the calculation so arrived at, if received, would be confusing, misleading and not probative of any proper fact in this case.

Now, that is my objection. Now, I wish to elaborate briefly, and this reporter need not take it, if he wishes—it is simply for illustration of the point to the court.

(Counsel elaborates upon objection.)

The Referee: The defendant's objection to the offer of the document offered in evidence by plaintiff is overruled. The plaintiff's objection to the question is also overruled.

[fol. 764] (To which action and ruling of the referee, the defendant by counsel, then and there at the time duly excepted and still excepts.)

(And, to which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Now, read the question, Mr. Blume, to the witness?

(Question read by the reporter.)

(Which question was as follows:)

"Now, what is the difference between the amounts of premiums received and other earnings which you have there for that 5-year period, and the amount of paid losses and paid expenses which you have for that period?"

A. $271,044.

Q. Now, you have an allocation of deposit capital for that five years, based upon a percentage of business, which amounts to $100,400, haven't you?

A. Yes.

Q. How is that?

A. Yes, sir.

Q. Now, basing your calculations on your allocation of deposit capital, will you figure the percentage of profit, figuring against that allocation the difference between the amount of premiums received and other earnings, and the amount of losses paid and expenses paid for that period of five years in question?

Mr. Folonie: We make the same objection as we made a few moments ago in detail to the preceding question.

The Referee: Overruled.

Mr. Folonie: Exception.

[fol. 765] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

The Referee: The portions of the documents read by counsel for plaintiffs and by him offered in evidence, are received in evidence. The objection by the defendant to the receipt of those portions in evidence is overruled.

Mr. Jacobs: That was with the understanding of the correction of the one item which you accepted.

The Referee: Yes.

(The portions of the documents so offered and admitted in evidence, having been by counsel read into the record while making such objection, the same are not again reproduced.)

Mr. Jacobs:

Q. Now, have you your answer ready?

A. That would give a profit of 270 per cent.

Q. Now, Mr. Groth, are your annual statement reports to the State of Missouri for this company correct?

A. To the best of my knowledge, they are.

Q. I am going to get you to take your annual statement report for the company in question for the year 1917.

Mr. Folonie: Is that question as to the annual statements?

Mr. Jacobs: This is the annual statement report, for the year 1917.

Mr. Jacobs:

Q. What does your report show your interest and rents amount to?

[fol. 766] Mr. Folonie: If it will facilitate counsel any, if the Court please, we make no question as to the propriety of annual reports, and we consent that counsel may read, subject to our objections as to the propriety of the items for consideration—we consent to his reading any part of them he thinks are proper, without submitting them to the witness because we do not question the correctness of the figures therein contained, although we will object to

some of them as to their proper applicability to the issues in the case here.

The Referee: Very good. If that is agreeable to counsel, it may be adopted.

Mr. Jacobs: All right. I will just read these, and if there is no objection to them from your reports, they will go into the record.

Mr. Jacobs:

Q. Are your interest and rents for the year 1917, according to that report, $391,483?

Mr. Folonie: That is for the United States?
Mr. Jacobs: For the United States.
The Witness: For the year 1917?
Mr. Jacobs: 1917.
The Witness: And 5 cents.

Mr. Jacobs:

Q. Leave off the odd cents. "Profit on Investments" if any?

Mr. Folonie: We object to any evidence of profit on investments, on the ground that it contravenes the right of the plaintiff under the Fourteenth Amendment of the Constitution, and under the Constitution of the State of Missouri, and if the statutes be so construed as to permit the [fol. 767] taking of the same into account in determining the rates in Missouri, the same operates to deprive the plaintiff of its property without due process of law.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Is that $67?
A. $67.
Q. Now, "Loss on Investments." Is that $176,584?
A. Yes, sir.
Q. "Investment Expenses" for that year, $59,089?

Mr. Folonie: Same objection to the entire inquiry relating to investment expenses and losses.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. What is that figure?
A. $59,089.
Q. "Net Profit on Investments," $159,876?

Mr. Folonie: Same objection to that.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $159,876.

[fol. 768] Mr. Jacobs:

Q. Now, for 1918, look at your company's annual statement report for the year to the State of Missouri, "Interest and rents, $436,723?"
A. Yes, sir.

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. "Profit on investments, $750?"

Mr. Folonie: Same objection.

A. Yes, sir.

The Referee: Objection overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. "Losses on investments, $96,104?"

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. "Investment expenses, $109,506?"

Mr. Folonie: Same objection.
The Referee: Objection overruled.

[fol. 769] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. "Net profit on investments, $276,562?"

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. All right. I hand you your annual statement report to the State of Missouri for this company for 1919.

Mr. Hogsett: Can't you just read these—read those into the record?

Mr. Jacobs: Well, I am, and he is just checking them to see if I am correct on them.

Mr. Jacobs:

Q. "Interest and rents, $488,151?"

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

"Profits on investments, $88,698?"

[fol. 770] Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Is that right?
A. Yes, sir.
Q. "Losses on investments, $249,824?"

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Is that correct?
A. Yes, sir.
Q. "Investment expenses, $71,361?"

Mr. Folonie: If the court please, and there is no objection, instead of putting it by question and answer, why can't counsel read such portions of that page which he claims to be applicable, and we will preserve our objections as we stated it before, and it may be considered that the witness will answer "yes, those are the figures" as to each of the figures so read by counsel.

The Referee: That will shorten it.

Mr. Jacobs: All right. I read, "Investment expenses—" Did you get that, Mr. Blume?

(Reporter reads record.)

Mr. Jacobs: That's right.

"Net profit on investments, $255,641." Statement to Missouri for 1920. "Interest and rents, $544,818." Profit {fol. 771} on investments, $173,184." "Losses on investment, $441,615." "Investment expenses, $89,318." Net profit on investments $187,068.

Now, 1921. I hand you annual statement report of this company to the State of Missouri for 1921:

Interest and rents	$516,910
Profit on investments	309,660
Losses on investments	40,011
Investment expense	81,930
Net profit on investments	704,629

Now, the total for the five years of "interest and rents" on those figures, $2,377,——

Mr. Folonie (interrupting): Same objection to the totals, as was made to the other figures.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: "Interest and rents, $2,377,785." Total for the five years, "Net profit on investments, $572,359." "Losses on investments," for the five years, $1,004,138. "Investment expenses," for that period, $366,204. "Net profit on investments," $1,579,776. Now, you have a de-

posit capital for that year of 5 million—for those five years, of $5,400,000?

A. $5,020,000.

Mr. Jacobs:

Q. $5,020,000. Now, will you figure the percentage of [fol. 772] earnings on deposit capital, figuring against your total deposit capital for that five years, and your net profit on investments for the five years of $1,579,776?

Mr. Folonie: Same objection to that.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

(Witness makes calculation.)

A. 31 per cent.

Mr. Jacobs:

Q. Plus?

A. Plus. 31 per cent plus.

Q. 31 per cent plus?

A. Yes.

Q. Now, Mr. Groth, 31 per cent plus represents the percentage of profit on your deposit capital for that five years, figuring it against the net profit on investments and losses for that same period, doesn't it?

A. In this method of calculation, yes.

Q. Well, these figures were taken from your annual statements reports, weren't they?

A. They were.

Q. And are correct, aren't they?

A. Yes, sir.

The Referee: Take a short recess now.

(Which was accordingly done.)

Mr. Jacobs:

Q. Another of the companies you testified to, Mr. Groth, was the Union Assurance Society of London, wasn't it?

A. Yes, sir.

Q. That is an English company?

A. Yes, sir.

[fol. 773] Q. Where are its headquarters—of this company, I mean?

A. In this country, New York City.

Q. But it has an office in Chicago?

A. For the western department.

Q. I hand you underwriting experience by classes of that company for the year 1917—is that the instrument which was filed by your company for that year in the State of Missouri?

A. Yes, sir.

Q. Now, for the year 1917; premiums, 20,432?

A. Yes, sir.

Q. "Other earnings, $1,918?"

A. Yes, sir.

Mr. Folonie: Same objection as to that, as has been previously made as to any proof of earnings.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. "Losses paid, $13,938?"

A. Yes, sir.

Q. "Expenses paid, $8,330?"

A. Yes, sir.

Q. All right. I now hand you underwriting report for the year 1918 of that company. Is that the underwriting report—experience by classes of that company for the year 1918, filed with the State of Missouri?

A. Yes, sir.

Q. "Premiums for 1918, $22,018?"

A. Yes, sir.

Q. Other earnings, $1,700?"

Mr. Folonie: Same objection to that as to the previous question about earnings.

The Referee: Overruled.

[fol. 774] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.
Q. "Losses paid $16,387?"
A. Yes, sir.
Q. "Expenses paid, $7,772?"
A. Yes, sir.
Q. I hand you the underwriting experience by classes report for the year 1919, filed in Missouri by that company. Is that the report which was filed in Missouri for that company? (Handing document to witness)
A. Yes, sir.
Q. 1919, "Premiums, $40,280?"
A. Yes, sir.
Q. "Other earnings, $3,434?"

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Paid losses, $6,585?"
A. Yes, sir.
Q. "Expenses paid $18,069?"
A. Yes, sir.
Q. I now hand you underwriting experience by classes report of this company as filed for the State of Missouri for 1920. Is that the instrument which I have handed you now, which I have just described?
A. It is.
Q. "Premiums, $84,943?"
A. Yes, sir.
Q. "Other earnings, $5,858?"

[fol. 775] Mr. Folonie: Same objection to that.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Losses paid, $26,664?"
A. Yes, sir.
Q. Expenses paid, $34,902?"
A. Yes, sir.
Q. I now hand you underwriting experience by classes of that company as filed with the State of Missouri for the year 1921. Is that the instrument which I now hand you?
A. It is.
Q. "Premiums, $64,933?"
A. Yes, sir.
Q. "Other earnings, $5,846?"

Mr. Folonie: We object to any proof of other earnings on the same grounds made respecting previous questions.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Is that correct?
A. Yes, sir.
Q. "Losses paid, $75,052?"
A. Yes, sir.
Q. "Expenses paid, $35,994?"
A. Yes, sir.
Q. Do those premiums for the 5-year period aggregate $232,696?

[fol. 776] Mr. Folonie: We object to any aggregation of premiums on the same ground of objections which were made, and counsel asked for a summary of the five years'

experience as to the company whose figures—on which he interrogated just previously.

The Referee: That objection does not raise any question as to the accurate reading of the figures from the reports?

Mr. Folonie: No.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Is the aggregate of other earnings for the 5-year period $18,756?

Mr. Folonie: Same objeteion to that as to previous question respecting earnings, as to their competency, and the constitutional question which was called to the court's attention.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Is the total of premiums received and other earnings, does that amount to $251,362 for that period?

A. Yes, sir.

[fol. 777] Q. Do the aggregate paid losses for that period amount to $138,626?

A. Yes, sir.

Q. And the aggregate expenses paid for that period $105,067?

A. Yes, sir.

Q. Do the total losses paid and expenses paid amount to $243,693 for that period?

A. Yes, sir.

Q. Now, as between the total losses paid and expenses

paid, and the total premiums received, and other earnings, is there a difference of $7,669?

A. There is.

Q. That being the amount which the earnings exceed the expenses and losses?

A. Yes, sir.

Mr. Folonie: We object on the different grounds we have already called to the court's attention; that it is adding together figures there on different bases—which are on different bases, and we renew our constitutional objection.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Can you tell me whether or not it is a fact that the Missouri business for this company for that period amounted to 3 per cent of the total business of the company for the country?

A. I can check that up very quickly (witness examines document).

Q. All right.

A. It averages about 3 per cent.

Q. Now, I will get you to state whether or not the deposit capital of this particular company in the United States amounted in 1917 to—1917, 1918, 1919, and 1920, to $387,
[fol. 778] 000 for each one of those periods?

A. I wish leave to verify that with the statement.

Q. All right, here it is. I am handing you the annual statement report for 1917 of your company, as filed with the State of Missouri. Give me the deposit capital for that year, now.

A. $387,000 (referring to document).

Q. All right. I now hand you this company's annual statement report to Missouri for the following year—1918? What is the deposit capital for that year?

A. $387,000.

Q. And your annual statement report for that company for the following year, namely, 1919, as filed in Missouri?

A. $387,000.

Q. In 1920, your annual statement report of that company as filed in Missouri?

A. $387,000.

Q. And 1921, your annual statement report of that company as filed with the State of Missouri?

A. $463,000.

Q. Now, do those five years aggregate $2,011,000?

A. I will check them (witness makes calculation). They do.

Q. Now, 3 per cent, you said, was about the relationship as between the business of Missouri and the total business of the country for that period?

A. Yes.

Q. And is 3 per cent of that sum of money, $2,011,000, $60,330?

Mr. Folonie: We object, if the court please, to any 3 per cent of this figure as incompetent and immaterial, and not any proper predicate.

[fol. 779] The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. It is.

Mr. Jacobs:

Q. Will you give the percentage of profit, figuring the amount of money as representing 3 per cent of the capital deposit of your money for the five years, of your profits of $7,069 for that same period?

Mr. Folonie: We object to it on all the grounds of objections previously urged to the court in its examination of this witness, when a similar question was asked as to a preceding company.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. It should show a profit of 12 per cent.

Q. 12 and what?
A. 12.7 per cent.
Q. I now hand you again your annual statement of this company for Missouri for the year 1917.

Mr. Folonie: Still the Union Assurance?
Mr. Jacobs: The same company, yes.

Mr. Jacobs:

Q. Now, you testified to the various capital deposits from these annual statement reports for the five years just a moment ago, so there is no use going over that again, is there?
A. No, sir.
Q. What does it show for the year 1917 as to your interest and rents for that company?

[fol. 780] Mr. Folonie: Object to any evidence of interest or rents on the ground that the same are not any part of the earnings in Missouri, and that the same are not a proper matter to be taken into consideration in determining the fire rate, or in determining profit or loss, and that if the statutes be so construed as to permit consideration of such items in determination of whether the companies have made a profit or loss in the State of Missouri, the statutes and laws of Missouri, if so construed, would be in contravention of the Fourteenth Amendment to the Constitution of the United States and in contravention of the Constitution of the State of Missouri, and depriving the plaintiffs of property without due process of law.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $62,136.
Q. Investment profit for that year?
A. $147.
Q. Investment losses?
A. $45,192.
Q. Investment expenses, $1,636?
A. Yes, sir.
Q. Net investment profit, $15,455?
A. Yes, sir.

Mr. Folonie: Understood the same objection to this line of inquiry, if the court please, without repetition.

The Referee: Overruled. And, in this connection, I doubt whether an objection simply that is based upon an alleged violation of the Constitution of the State of Missouri raises any constitutional question at all. That is merely a sug- [fol. 781] gestion for the consideration of counsel.

Mr. Folonie: I have previously called the court's attention to the provision of the Constitution of the State of Missouri which we have in contemplation in making our objection, and I will do it again specifically so that the court may be advised of the exact point of objection.

The Referee: In order to avoid any unnecessary repetition, counsel might well point out the particular sections intended to be invoked by the objection, and it will be understood in subsequent objections that those sections, and only those sections, are embraced within the scope of the objection.

Mr. Leahy: That may also be understood with respect to previous objections, Your Honor?

The Referee: Oh, I presume so.

Mr. Folonie: When reference is made in objections, if the court please, to the Fourteenth Amendment of the Constitution of the United States and to the Constitution of the State of Missouri in connection with objections of the plaintiff to earnings upon capital stock, surplus, interest earnings, profit or interest or accretions upon capital or surplus, or upon unearned premium or unearned premium reserve, and in fact, any earnings other than those derived from underwriting, the plaintiff desires to specifically refer back to a previous objection, and now reiterates the same. That the said objection is desired to raise the point that if the statutes of the State of Missouri be so construed as to permit proof of such items and consideration of the [fol. 782] same in determining the profits or losses of the plaintiff, in determining the proper rate of charge for its business of insurance in that state, then the said statutes and particularly Section 6283 thereof would be unconstitutional and void in that the same are in violation of Section 1 of the Fourteenth Amendment of the Constitution of the United States; and that that construction of said statute would render it confiscatory, would deprive the

plaintiffs and each of them of their property and property rights without due process of the law; would deny to them the equal protection of the laws; and that said section would, in such event, be unconstitutional and void, and in violation of Section 30 of Article 2 of the Constitution of the State of Missouri; and that said construction of said statute would render it confiscatory and would deprive the plaintiffs and each of them of their property and property rights without due process of law.

May it be so understood, if the court please, that in making such objections, and in reference to the Constitution of Missouri and the Fourteenth Amendment of the Constitution of the United States, that it is designed and intended to make objection as now specifically stated without reiteration in each instance?

The Referee: Yes. And the objection will be deemed to apply to the amendments and sections particularly now designated by counsel, and to them only, unless otherwise stated.

Mr. Jacobs:

Q. Now, you have 1918 there, Mr. Groth?

A. Yes, sir.

[fol. 783] Q. "Interest and rents, $72,371?"

A. Yes, sir.

Q. "Investment profit, $147?"

A. Yes, sir.

Mr. Folonie: To that we make the same objection, if the Court please, as specifically stated to the court a few moments ago.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. "Investment losses, $14,969?"

Mr. Folonie: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. "Investment expenses, $1,869?"

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. "Total investment profit, $55,680?"

Mr. Folonie: Same objection.
The Referee: Overruled.

[fol. 784] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. I hand you the annual statement report of this company under inquiry as filed for the year 1919 with the State of Missouri. That is the instrument, isn't it? (Handing witness document.)
A. Yes, sir.
Q. "Interest and rents, $84,266?"
A. Yes, sir.

Mr. Folonie: Same objection to this entire line of inquiry, if the Court please?
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. "Investment profit, $44,524?"
A. Yes, sir.
Q. "Investment losses, $8,260?"
A. No, sir.
Q. Is that wrong?
A. $82,609.
Q. "$82,609, investment losses?"
A. Yes, sir.
Q. "Investment expense, $2,126?"
A. Yes, sir.
Q. "Net investment profit, $44,055?"
A. Yes, sir.
Q. I now hand you the annual statement report of the company under inquiry as filed for the year 1920 in the State of Missouri. Is that the instrument? (Handing document to witness.)

Mr. Folonie: What company is this?
The Witness: Union Assurance Society.

[fol. 785] Mr. Jacobs:

Q. "Interest and rents, $94,903?"
A. Yes, sir.

Mr. Folonie: Same objection to the entire line of inquiry relating to the question respecting earnings on any activities of the company other than its underwriting activities in the State of Missouri, on the ground of objection specifically called to the court's attention in connection with our constitutional objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. "Investment profits, $1,956?"
A. Yes, sir.
Q. "Investment losses, $65,304?"
A. Yes, sir.

Q. "Investment expenses, $2,296?"
A. Yes, sir.
Q. "Net investment profit, $29,259?"
A. Yes, sir.
Q. I now hand you the annual statement report of the company under inquiry, the Union Assurance Society, for 1921, as filed with the State of Missouri. Is that it? (Handing document to witness.)
A. Yes, sir.
Q. "Interest and rent, $107,732?"

Mr. Folonie: Same objection to the line of inquiry respecting this year as we have specifically stated to the court relating to our constitutional objections.
The Referee: Overruled.

[fol. 786] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. "Investment profit, $124,171?"
A. Yes, sir.
Q. "Investment losses, $35,089?"
A. Yes, sir.
Q. "Investment expense, $2,445?"
A. Yes, sir.
Q. "Net investment profit, $194,369?"
A. Yes, sir.
Q. Now, upon this report, Mr. Groth, does your deposit capital for the five years amount to $2,011,000? (Witness makes calculation.)
A. Yes, sir.
Q. Do your interest and rents amount, for the 5-year period, to $421,408?

Mr. Folonie: Same objection to this line of inquiry seeking to summarize the five years, on the same ground of objections made to the integral figures sought now to be correlated.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Your investment profits, do they amount for the 5-year period, to $170,945?

Mr. Folonie: Same objection.
The Referee: Overruled.

[fol. 787] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Will you foot that column? There is the one where we made the change, on your suggestion, for the investment losses for that one year, so perhaps you better total that and see what the total really is.

A. $243,163.

Q. That is the total investment losses for the period of five years?

A. Yes, sir.

Q. Now, do the total investment expenses for the period amount to $10,372?

A. Yes, sir.

Q. What do the net investment profits amount to?

Mr. Folonie: Same objection to that.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. For the 5-year period?

A. $338,818.

Q. Now, you have a deposit capital of $2,011,000, haven't you?

A. Wait a minute, has this been figured in here? Is this the net of all these figures here? (Indicating.)

Q. This is the net. This was a corrected column as we read them off, you remember.

A. Yes, but has this been changed? That has got to be changed over here.

[fol. 788] Q. I expect so.

A. Yes, this figure is wrong.

Q. Well, make your change.

A. By changing this, this makes that wrong. That is copied from the annual statement.

Q. Well, all right. Will you figure the percentage of profit, if any, as against your deposit capital for the 5-year period with your net investment profit of $338,818 for that period?

Mr. Folonie: Same objection to that.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time, duly excepted and still except.)

A. Yes.

Mr. Jacobs:

Q. The year you had in mind was 1919, the annual statement report.

I now hand you again your annual statement report of that company for 1919, and look on it and see what your net investment profit for 1919, according to that report, is.

A. $44,055.

Q. Well, that is correct on there, then, isn't it?

A. It is; yes.

Q. Now, what is your percentage?

A. 11.2 per cent.

Q. 11.27?

A. Yes.

The Referee: We will adjourn until 2 o'clock this afternoon.

(Which was accordingly done, pursuant to which, parties reconvened in the same place, and the following proceedings were had:)

[fol. 789] GEORGE GROTH, recalled to the stand for further examination on behalf of the defendant, having been previously sworn, testified as follows:

Cross-examination continued by Mr. Jacobs:

Q. Mr. Groth, I am going to call your attention specifically to the company about which you testified, the Commercial Union Fire Insurance Company, and I hand you the underwriting experience by classes report of that company for the year 1917 to the State of Missouri. Look and see if that instrument is the one I have just described. (Handing document to witness.)

A. Yes, it is.

Q. Now, follow me on that report, as I read these figures to you, for the year 1917. "Premiums, $30,719."

A. Do you want me to verify them?

Q. Yes, sir.

A. Yes.

Q. "Other earnings, $1,673?"

A. Yes, sir.

Mr. Folonie: We object to any evidence of other earnings as incompetent and immaterial, and not properly bearing on the question of the propriety of rates in Missouri, and as in contravention of the Constitution of the United States and the Fourteenth Amendment thereof, and the Constitution of Missouri, as such constitutional objections have heretofore been specifically called to the court's attention.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

[fol. 790] Mr. Jacobs:

Q. "Paid losses, $18,654?"

A. Yes, sir.

Q. "Paid expenses, $11,948?"

A. Yes, sir.

Q. I hand you the underwriting experience by classes report for that company, as filed with the State of Missouri for the year 1918. Follow these figures on that report and see if they are correct: "Premiums, $33,677?"

A. Repeat that again, please.

(Question read by the reporter.)

A. Well, it was put here as $43,000, by somebody. I will change that, with your permission. Somebody made that computation.

Q. It really adds $33,000, doesn't it?

A. Yes. These two figures added together make $37,074.

Q. See if it doesn't add $33,677.

A. Shall I change that here?

Q. Whatever it is.

A. $33,677.

Q. "Other earnings, $2,810?"

A. Yes, sir.

Mr. Folonie: Same objection to other earnings that we made respecting proof of other earnings as previously called to the court's attention.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Q. "Paid losses, $17,534?"

A. That is right.

Q. "Paid expenses, $12,412?"

A. Yes, sir.

Q. Have you got an item—is there a column there on this report which has a total of losses and expenses on it?

A. No, sir.

[fol. 791] Q. All right. I hand you the underwriting experience of your company, as filed in the State of Missouri, for the year 1919, and will ask you to see if these figures are correct, comparing them with that: "Premiums, $58,127"?

A. Pardon me just a moment. I happened to see something here that isn't quite right. These three don't seem

to add together. Yes, that is the figure it should be. Someone carried this down wrong; carried the losses in here by mistake. It should be this figure here carried in here (indicating). This should be $34,769—$58,127 is correct.

Q. "Other earnings, $3,210"?

Mr. Folonie: Object to any evidence of other earnings on the grounds heretofore urged, and pointed out to the court.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

The Witness: I can change these figures there, can't I? They should be $4,410 instead of $3,210.

Mr. Jacobs: Yes. That should be $4,410 for other earnings?

The Witness: Yes.

Mr. Jacobs:

Q. "Losses paid, $33,038?"

A. Yes, sir.

Q. "Expenses paid, $26,330?"

A. Yes, sir.

Q. I hand you underwriting experience report by that company for the year 1920, as filed in the State of Missouri [fol. 792] and get you to look at it and compare the following figures: "Premiums, $89,044?"

A. Yes, sir.

Q. "Other earnings, $56,053?"

A. Yes, sir.

Mr. Folonie: Object to all evidence of other earnings on the grounds heretofore called to the court's attention.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel, then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. "Paid losses, $23,964?"
A. Yes, sir.
Q. "Paid expenses, $38,667?"
A. Yes, sir.
Q. I hand you the underwriting experience by classes report for Missouri for the year 1921 for the company, The Commercial Union Fire Insurance Company, filed with the State of Missouri, and will you compare these figures with those? "Premiums, $59,754?"
A. Yes, sir.
Q. "Other earnings, $17,885?"
A. No, sir.
Q. Am I wrong on that?
A. $4,539.
Q. Oh, I was reading the total. $59,754?
A. Yes.
Q. "$4,539" for other earnings?
A. Yes, sir.

Mr. Folonie: Same objection to other earnings.
The Referee: Overruled.
Mr. Folonie: Exception.

[fol. 793] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. "Losses paid, $65,784?"
A. Yes, sir.
Q. "Expenses paid, $33,644?"
A. Yes, sir.
Q. Now, is the total of premiums received for that five years $271,321?

Mr. Folonie: As shown by these blanks, you mean?
Mr. Jacobs: As shown on the figures just testified to.
Mr. Folonie: We object to adding together premiums which are computed for 1917 on the basis of taking into account reinsurance assumed and ceded, and subsequent years upon the basis of direct writing excluding reinsurance both assumed and ceded; on the grounds that the ad-

dition of the figures would give a calculation which would not be either a direct writing nor the contrary; and that it is incompetent, and an improper figure for any consideration.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Now, will you total the other earnings there? We made that one change, and perhaps that result is a few dollars too small. Now, what is the total of the other earnings for the five years?

[fol. 794] Mr. Folonie: Object to any evidence of other earnings on the constitutional grounds called to the court's attention, on the ground they are not offered—not proper for consideration.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $18,885.

Mr. Jacobs:

Q. Now, what is the total of the premiums received and other earnings for that period of five years? Now, the total is what? The total of the premiums and other earnings for the period of five years?

A. $280,206.

Q. Now, what is your total for paid losses for the 5-year period?

Mr. Folonie: Object to adding the paid losses because for one year they are on the basis of the losses taking into account assumed and ceded reinsurance, and the losses for the other four years are on the direct-writings basis, and therefore, adding them together would give no figure proper for consideration.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $158,974.

Mr. Jacobs:

Q. What are your total expenses for that period paid—total expenses paid?

A. $123,001.

[fol. 795] Q. Now, what are your total losses and expenses paid for the five years?

A. $281,975.

Q. Now, will you deduct that amount from the amount of total premiums and other earnings, for the period of five years?

A. Yes, sir.

Mr. Folonie: We object to receiving the answer on the ground indicated to the parts and parcels forming the conclusion as a whole.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. What does it amount to?

A. $8,231.

Q. Now, what proportion of the business for that period was done in the State of Missouri, in comparison to the total business of the company in the country for this particular company?

Mr. Folonie: Objected to as incompetent, immaterial and irrelevant, and contravening the constitutional rights of the plaintiff, as those constitutional privileges are specifically pointed out heretofore.

The Referee: Overruled.

To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Approximately 3½ per cent.

Mr. Jacobs:

Q. Now, do you know the total capital employed by that company during the five years?

A. Not without reference.

[fol. 796] Mr. Folonie: Object to assuming any of the capital was employed in the State of Missouri as contrary to the facts.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. I am asking you now for the total capital employed in the United States during this period, and I am handing you your annual statement of this particular company for the year 1917. Now, what does it show?

A. $200,000.

Q. Look at your annual statement report of this company for the next year, 1918. What is the capital?

A. $200,000.

Q. Look at your annual statement report of this company for the following year, as filed with the State of Missouri, and what is the capital?

A. $200,000.

Q. Look at your annual statement report for 1920 of this particular company, as filed with the State of Missouri, and what was your capital for that year?

A. $200,000.

Q. The annual statement report of this company for 1921?

A. $200,000.

Q. Making a total of—for the five years of how much?

Mr. Folonie: We object to multiplying the capital by the number of years as an improper predicate and basis.

The Referee: Overruled.

[fol. 797] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. One million dollars.

Q. Now, you say that approximately 3½ per cent of the total business of this company for the country was done over that period of five years in the State of Missouri?

A. Yes, sir.

Q. Now, what is 3½ per cent of 1 million dollars?

Mr. Folonie: We object to any evidence of what such a conclusion is, upon the ground that the amount of business done in the state is in no wise indicative of the amount of capital, if any, employed in the state.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $35,000.

Q. Now, you have a sum of $8,231 which represents the amount of the total premiums and other earnings for the period in excess of the total amount of losses paid and expenses paid for that 5 year period?

A. Yes, sir.

Q. What per cent of earnings does that represent upon this allocated capital stock of $35,000?

Mr. Folonie: We object to any assumption that the earnings are on the capital, or that that is any proper method of calculation.

The Referee: Overruled.

[fol. 798] Mr. Folonie: Object also to such part of its as includes earnings upon invested capital of the plaintiff, as contravening the plaintiff's right, as taking its property without due process of law.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. 23.5 per cent.

Mr. Jacobs:

Q. Now, Mr. Groth, still referring to the Commercial Union Fire Insurance Company of New York, I am hand-

ing you its annual statement report to the State of Missouri for 1917, being its annual statement report. You have testified, from examination of the underwriting statement reports of this company for the 5 year period under inquiry, that its capital was $200,000?

A. Yes, sir.

Q. In each of those years?

A. Yes, sir.

Q. What were its interest and rents for 1917?

Mr. Folonie: Object to any evidence of interest or rents on the ground they are not proper matters for consideration in arriving at the profit or loss of the plaintiff in the conduct of its business of underwriting in the State of Missouri, and not a proper matter to be taken into consideration; and if taken into consideration, and if the statutes be so construed as to require or authorize such proceeding, they would be in contravention of the constitutional provisions heretofore specifically called to the court's attention.

The Referee: Overruled.

[fol. 799] Mr. Folonie: We preserve our exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $53,312.

Mr. Jacobs:

Q. What were your profits on investments that year?

Mr. Folonie: To that we make the same objection.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. What were the profits on investments?

A. There were no profits.

Q. Losses on investments for that year?

Mr. Folonie: Same objection to that.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $42,877.

Mr. Jacobs:

Q. Investment expenses for 1917?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $1,314.

[fol. 800] Mr. Jacobs:

Q. Net profit on investments for 1917?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $9,120.

Mr. Jacobs:

Q. I am handing you the annual statement report for 1918 of the same company.

Mr. Folonie: What company is this?
Mr. Jacobs: This is the Commercial Union Fire Insurance Company.

Mr. Jacobs:

Q. For the year 1918, what were your interest and rents, if any?

Mr. Folonie: To that we object as incompetent and immaterial; not a proper matter to be considered on the in-

vestigation of the propriety of rates, or whether the plaintiff has conducted its business at a profit or loss in the state under rates existing, and that it is not within the contemplation of the statutes of Missouri; that a construction of the statutes, if adopted as so proposed by counsel, would be violative of the constitutional rights and privileges of the plaintiff, as such constitutional provisions heretofore have been called specifically to the court's attention; and on these grounds we object.

The Referee: Overruled.

Mr. Folonie: Exception.

[fol. 801] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $51,803.

Q. What were your profits on investments, if any?

Mr. Folonie: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. None.

Mr. Jacobs:

Q. What were your losses on investments, if any?

A. $37,530.

Q. What were your investment expenses?

Mr. Folonie: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $1,475.

Mr. Jacobs:

Q. What was the net profit on your investments?

Mr. Folonie: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $12,797.

Mr. Jacobs:

Q. These figures, as you are giving them, are figures [fol. 802] taken from the annual statement report in accordance with the requirement of the state to give best figures, eh?

A. Yes, sir.

Q. And represent your calculations upon profits on investments as they appeared on those reports—if there were profits?

A. Yes, sir.

Mr. Folonie: Object to that on the ground that that does not in any way make them competent on the question here under inquiry.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. I now hand you the annual statement report for 1919, as filed with the State of Missouri. What were your interest and rents?

A. $60,099.

Mr. Folonie: Same objection.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. What were your profits on investments?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 803] A. $106,417.

Mr. Jacobs:

Q. What were your losses on investments?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $191,060.

Mr. Jacobs:

Q. What were your investment expenses?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $1,531.

Mr. Jacobs:

Q. Net profit on investments for the year 1919?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. If there was any?

A. A loss of $26,075.

[fol. 804] Q. I hand you the annual statement report for 1920 of this company, as filed by the company in the State of Missouri. What were your interest and rents?

Mr. Folonie: Same objection.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $66,656.

Mr. Jacobs:

Q. What were your profits on invesments, if any?

Mr. Folonie: Same objection.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. None.

Mr. Jacobs:

Q. What were your losses, if any, on investments?

Mr. Folonie: Same objection.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 805] A. $72,159.

Mr. Jacobs:

Q. What were your investment expenses?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $1,497.

Mr. Jacobs:

Q. What were your losses or gains on investments, if any?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $7,001.

Mr. Folonie: Move to strike out the answer.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. I hand you underwriting statement report of this company filed with the State of Missouri for 1921. What were your interest and rents for that year?

Mr. Folonie: Same objection.
The Referee: Overruled.
[fol. 806] Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $78,325.

Mr. Jacobs:

Q. What were your profits on investments that year?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $40,908.

Mr. Jacobs:

Q. What were your losses on investments?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $12,648.

Mr. Jacobs:

Q. What were your investment expenses?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

[fol. 807] A. $1,630.

Mr. Jacobs:

Q. What was your net profit on investment for 1921?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $105,026.

Mr. Jacobs:

Q. Now, what was the total of the five years interest and rents: Did it amount to $310,165?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. Did your profits on investments for the five years amount to $147,397?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $147,397; yes, sir.

Mr. Jacobs:

[fol. 808] Q. Did you add in or deduct this $7,000 losses into this one year, 1920?

A. That is all considered. Surely, we put in the losses. It was put in as a loss and testified to that way.

Mr. Jacobs: I just wanted to call that to his attention.

Q. Now, what was the total of your losses on investments for the five years?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $356,274.

Mr. Jacobs:

Q. What was the total of your investment expenses for the 5-year period under inquiry?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $7,447.

Mr. Jacobs:

Q. What was the net profit on investments for the five years?

Mr. Folonie: Same objection.
The Referee: Overruled.
[fol. 809] Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $93,867.

Mr. Jacobs:

Q. Now, will you figure that, namely, $93,867, being the net profit on investments for the 5-year period, against a capitalization of 1 million dollars, and tell the court what the percentage of earnings there was, if any, on the capital?

Mr. Folonie: We object on the grounds that such calculation, if made, would be incompetent and immaterial;

that the same is not any item or element properly for consideration; that it is not any profit or losses on investments in the State of Missouri within the statutes of the State of Missouri; that the same, under the proper construction of Missouri statutes, is in no wise proper for consideration in ascertaining the propriety of rates; the statutes specifically provide the method in which rates shall be revised, in consideration for a 5-year period; by considering the underwriting experience for the companies for that period. And we renew all our constitutional objections under the Constitution of Missouri and under the Fourteenth Amendment to the Federal Constitution as we have heretofore called them specifically to the court's attention.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plain-
[fol. 810] tiffs by counsel then and there at the time duly excepted and still except.)

A. 9.38 per cent.

Mr. Folonie: Move to strike out the answer.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. I am handing you, Mr. Groth, the underwriting experience by classes for the year 1917 for the Palatine Insurance Company.

Mr. Folonie: What company is this?

Mr. Jacobs: Palatine.

Q. For the year 1917—follow these figures in your underwriting experience report of that company to the State of Missouri, as you have it in your hands now, for the year 1917: "Premiums received, $104,755?"

A. Yes, sir.

Q. Other earnings, $5,403?

Mr. Folonie: We object to any evidence of other earnings on the grounds heretofore specified to the court.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Q. "Paid losses, $39,187?"

A. Yes, sir.

Q. "Paid expenses, $41,617?"

A. Yes, sir.

[fol. 811] Q. I now hand you the underwriting experience by classes for the year 1918, being a report filed with the State of Missouri by The Palatine Insurance Company. Is that correct?

A. Yes, sir.

Q. Are the following figures correct from that report: "Premiums received, $84,872?"

A. Yes, sir.

Q. "Other earnings, $5,144?"

Mr. Folonie: Object to any evidence of other earnings on the grounds heretofore specified to the court.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.

Mr. Jacobs:

Q. "Losses paid, $67,181?"

A. Yes, sir.

Q. "Expenses paid, $34,139?"

A. Yes, sir.

Q. I hand you the underwriting experience by classes report for the year 1919, as filed in the State of Missouri by The Palatine Insurance Company. Are the following figures correct in that report, and is that the report that I suggested?

A. It is.

Q. "Premiums received, $125,856?"
A. Yes, sir.
Q. "Other earnings, $8,687?"
A. Yes, sir.
Q. "Losses paid, $58,579?"
A. Yes, sir.
Q. "Expenses paid, $52,027?"
A. Yes, sir.
Q. I hand you the underwriting experience by classes as filed with the State of Missouri for the year 1920 by the [fol. 812] Palatine Insurance Company. Is that the report I described, that you have in your hands now?
A. Yes, sir.
Q. That is 1920, isn't it?
A. Yes, sir.
Q. "Premiums received, $196,185?"
A. Yes, sir.
Q. "Other earnings, $12,355?"

Mr. Folonie: Same objection to that.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Yes, sir.
Q. "Losses paid, $63,440?"
A. Yes, sir.
Q. "Expenses paid, $81,980?"
A. Yes, sir.
Q. Now, I hand you underwriting experience by classes report for the year 1921, as filed in the State of Missouri by The Palatine Insurance Company, and ask you: Is that the instrument which I have described that I now hand you?
A. Yes, sir.
Q. See if the following figures are correct, as they appear there: "Premiums received, $145,767?"
A. Somebody has wrote in a figure here, I am afraid. They have taken that amount instead of the premiums.
Q. How much should it be—a little more, isn't it?
A. It should be $139,139.
Q. Is that for 1921?
A. Yes, sir.

Q. It should be $139,139?
A. Yes, sir.
Q. $139,000?
A. $139,139.
Q. Now, what are your other earnings for that year?

[fol. 813] Mr. Folonie: Object to it on the grounds already called to the court's attention.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Go ahead.

A. $10,773.

Mr. Jacobs:

Q. What were your paid losses for that year?
A. Let's see, you took—whoever put these figures in here took the premiums and put them in the loss column, and reversed them, so I will have to refigure those.
Q. All right, figure them, and get them as they are.
A. They should be $89,311.
Q. $89,311?
A. Yes, sir.
Q. All right. Now, what were your paid expenses for 1921, as shown in that report?
A. $67,921.
Q. All right. Now, Mr. Groth, will you tell the court what the total premiums received were for that period of five years?

Mr. Folonie: We object to the addition of these premiums received because they are part of the direct writings, and for other years they take into consideration reinsurance, and are, therefore, not on the same basis; that the addition thereof one to the other, would only give a misleading total and not one probative of any proper fact herein.
The Referee: Overruled.
Mr. Folonie: Exception.

[fol. 814] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. Do you wish me to change this total?

Q. Oh, yes; change them to the correct figure, because you see they are wrong.

A. $651,027.

Q. What were your totals for the 5-year period of other earnings?

Mr. Folonie: To that we object on the ground incompetent, and we adopt our constitutional objections as previously pointed out to the court.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $42,362.

Q. What were your total paid losses for the period?

Mr. Folonie: Object to that on the ground that the losses are, in some cases, upon the direct writings; and in others, writings taking into account reinsurance; and, therefore, not on the same basis, and therefore, misleading and improper.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $327,698.

[fol. 815] Q. What were your totals of paid expenses for the period of five years?

Mr. Folonie: To that we object because some of them contain expenses only on direct writings, and some contain expenses taking into account reinsurance assumed, taking into account reinsurance ceded; and, therefore, they are not on the same basis, and adding them together would not be probative of any proper issue herein.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $277,692.

Mr. Jacobs:

Q. Now, will you add together the total paid losses and expenses for the period?

Mr. Folonie: Object to this on the grounds urged to the paid-expenses addition and paid-losses additions, and we adopt both objections to the present question.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. That amounts to how much?

A. $605,390.

Q. Now, will you add together—what are your total premiums received and other earnings for the 5-year period?

[fol. 816] Mr. Folonie: To that we make the same objection as previously made respecting earnings.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $693,389.

Q. Now, will you subtract your total paid losses and expenses from your total earnings—other earnings and premiums received?

Mr. Folonie: To that question we make the objection: First, we adopt our objection made respecting the premium income, because it adds the different kinds of premiums on different bases; we object to that portion of it which relates to other earnings, and adopt our objection in

that respect upon the constitutional grounds called to the court's attention; to that portion of the question which relates to expenses and losses, we make objections that we made respecting these, namely, that they are expenses and losses in some years upon the direct writings, and in others, upon the direct writings, adding thereto, the assumed reinsurance and deducting ceded reinsurance, and therefore, if this calculation were permitted, it is subject to all the objections we have made to all the integral parts attempted in this conclusion.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

[fol. 817] Q. What balance did that leave in the shape of profits for the 5-year period?

Mr. Folonie: Object to that as assuming that the result of this calculation, when made, would be indicative of any profit or any proper admeasurement of supposed profit.

Mr. Jacobs: These are the figures of the companies themselves, given by themselves.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $87,999.

Mr. Jacobs:

Q. Now, what proportion of the business of the whole country was done in Missouri for that period of five years—this particular company, The Palatine?

A. I would say it averaged about 3½ per cent.

Q. What is that, an English company, the Palatine?

A. Yes, sir.

Q. I am handing you its annual statement report to Missouri for the year 1917, and ask you what its capital deposit was for that year. How much was it? $318,000?

A. $318,000.

Q. I hand you the report of this same company for the following year, 1918, filed with the State of Missouri. Was it $318,000?

A. $318,000; yes, sir.

Q. And the annual report of this company for 1919 as filed with Missouri?

A. $310,000.

Q. And for 1920——

[fol. 818] Mr. Folonie (interrupting): Is that loss in capital due to losses in Missouri that year?

A. $310,000.

Q. (Mr. Jacobs:) 1921?

A. $330,000.

Mr. Folonie: Must have made money in New York that year.

Q. (Mr. Jacobs:) Now, for the five years, does that add together a total—and amount to a total of $1,586,000?

A. Yes, sir.

Q. What is the 3½ per cent of that total capital deposit for the period of five years?

(Witness makes calculation.)

A. $55,510.

Q. Now, will you figure, if you will, the balance of $87,999 which appears as a profit from the underwriting reports of your company to the State of Missouri, against allocated capital deposit of $55,510?

Mr. Folonie: We make to this all the objections previously made, adding thereto the objection that the supposed computation now being made relates only to a part of the business conducted in the State of Missouri during the period, and eliminates from consideration entirely the so-called "unregulated classes," and, therefore, is not indicative of the profit or loss of the company in the state during the given period.

Mr. Jacobs: Do you contend that the Superintendent of Insurance of Missouri passes upon the rates of unregulated insurance there?

Mr. Folonie: Must consider all our business in Missouri to ascertain whether we made a profit or loss.

[fol. 819] Mr. Jacobs: But do you say, as a matter of fact, he passes upon the rates charged on non-regulated insurance done by your companies in the State of Missouri?

Mr. Folonie: My notion he doesn't pass on anything. He just takes a run and a jump at it, as far as I can judge.

Mr. Jacobs: Well, he has got lots of play here—I think there's 115 per cent profit in this company.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. What is the per cent of profit of The Palatine Company?

Mr. Folonie: Object to assuming that the supposed calculation when made is indicative of a supposed profit.

Mr. Jacobs: Company's figures.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. You get more than I do. I must have cheated myself on that.

A. I was just hoping you had not.

Q. You have got 153 per cent, and I had only 115.6 per cent.

A. The party who figured this here——

Mr. Folonie (interrupting): We want counsel's admission put in the record.

Mr. Jacobs:

[fol. 820] Q. Your figures then—the percentage of profit was what, as you figure it, Mr. Groth?

A. I wish just a few minutes' time to check myself.

Q. All right, go ahead; that's all right. I don't want to hurry you (Witness makes caluculation).

A. Well, I think your figures are wrong, but——

Q. (Interrupting.) Well, give me your calculation.

A. 158 per cent.

Q. 158 per cent, is that right?

A. It is, according to my calculation.

Q. Now, for this same company, you went through your annual statement reports and found the figures which you testified to awhile ago, with the deposit capital of this company for that period of five years under inquiry?

A. Yes, sir.

Q. No use of going over that again, is there?

A. No.

Q. Now, I hand you the underwriting report of the Palatine Insurance Company of London, England, filed with the State of Missouri for the year 1917. Will you tell what the interest and rents for 1917 were, paid by that company in this country?

Mr. Folonie: Object to any proof of interest or rents, because the same are in no wise any earnings in the State of Missouri, nor are they any earnings on the business of underwriting nor profit to be taken into account in determining the propriety of a rate, or in determining the profit or loss derived from the conduct of the business of insurance in Missouri; furthermore on the ground that the [fol. 821] statute provides that the earnings which may be considered are those earned in the State of Missouri, which is no wise any earnings in the State of Missouri; and we object further under the Constitution of the State of Missouri and the Fourteenth Amendment to the Federal Constitution, as heretofore called to the court's attention specifically, and on the ground that the statute of the State of Missouri, if so improperly construed as contended for by counsel to permit proof of these matters, would be in contravention of those provisions and deprive the plaintiff of its property without due process of law.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: I will agree that you make that whole objection, Mr. Folonie, if you don't want to repeat it on this stuff.

Mr. Jacobs:

Q. What were your interest and rents for 1917 for this company as appearing in your annual statement?

A. $116,682.

Q. What were your investment profits, if any, that year?

Mr. Folonie: Object to investment profits on the same ground.

The Referee: Overruled.

[fol. 822] Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. There were no profits.

Mr. Jacobs:

Q. Investment losses, if any?

Mr. Folonie: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $75,750.

Q. Investment expenses, if any?

Mr. Folonie: Same objection.

The Referee: Overruled.

Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $2,853.

Mr. Jacobs:

Q. Net investment profit for that year?

Mr. Folonie: Same objection.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $38,079.

Mr. Jacobs:

Q. I may—I am handing you now the annual statement report for 1918 of the Palatine Company, and this is not the [fol. 823] report which was made to the State of Missouri, but the report which we asked you to bring in since lunch, as you didn't have, and we didn't have this particular report with us. Is that correct?

A. Yes, sir.

Q. Is that a correct statement of the figures contained therein?

Mr. Folonie: It is a copy of the one filed with you, I presume, and if so, we will let him read it.

Mr. Jacobs:

Q. Is it?

A. It is.

Q. For 1918, interest and rents?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $133,715.

Mr. Jacobs:

Q. Investment profits?

Mr. Folonie: Same objection heretofore made respecting proof of investment profits.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. There were none.

Mr. Jacobs:

Mr. Folonie: Same objection.
[fol. 824] The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $37,120.

Mr. Jacobs:

Q. Investment expenses?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $3,203.
Q. Net investment profit for that year?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $93,365.

Mr. Jacobs:

Q. I now hand you the annual statement report for the year 1919 of the Palatine Company as filed in the State of Missouri for that year. Is that the instrument I have just described? (Handing document to witness.)

A. Yes, sir.

Q. What were your interest and rents for that year in your business of this company?

Mr. Folonie: Object to any evidence on rents, on the ground in no wise earned in the State of Missouri, because not an element proper for consideration nor contemplated by the statutes of the State of Missouri; on the ground that the same is no part of the underwriting experience or ac-[fol. 825] tivity, and, therefore, not proper for consideration in determining the propriety of rates. The same may not properly be considered in determining profit or loss of the plaintiff, which can be determined only on its underwriting activities in the State of Missouri; on the ground that the same is not within the contemplation of the statutes when properly construed; that a construction which would admit of such proof is violative of the constitutional rights and privileges of the plaintiff as they have heretofore been specifically called to the court's attention; each of which objection so specifically made on constitutional grounds is here reiterated the same as though they were here again set forth in like words and figures.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Interest and rents?

A. $154,877.

Q. Investment profits, if any?

Mr. Folonie: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $25,344.

Q. Investment losses, if any?

Mr. Folonie: Same objection.

The Referee: Overruled.

[fol. 826] (To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $88,381.

Mr. Jacobs:

Q. Investment expenses?

Mr. Folonie: Same objection.
The Referee: Overruled.

A. $3,778.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Net investment profit?

Mr. Folonie: Same objection.
The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $88,062.

Mr. Jacobs:

Q. Now, I hand you the annual statement report for The Palatine Company for 1920, filed with the State of Missouri that year. Is that it?

Mr. Folonie: May our objection stand to each question relating to the year 1920 the same as we made in the year 1919 without reiteration?
The Referee: Yes, and they are overruled.
Mr. Folonie: And exception preserved.

(To which action and ruling of the referee the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

[fol. 827] Q. 1920 investments—interest and rents?
A. $185,179.
Q. Investment profit?
A. $167,539.
Q. Investment losses?
A. $257,240.
Q. Investment expenses?
A. $4,125.
Q. Net investment profit?
A. $91,357.
Q. Now, I give you the annual statement report of The Palatine Company for 1921, as filed with the State of Missouri for that year. Is this it? (Handing document to witness.)

Mr. Folonie: To which inquiry so made respecting the investment sheet here presented, we make the same objections as were made to like inquiries relating to the year 1919.
The Referee: Overruled.
Mr. Folonie: Exception.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Is that the instrument I hand you?
A. It is.

Mr. Folonie: The court permits us, I understand, however, to have the objection so stand.
Mr. Jacobs: Yes.

Mr. Jacobs:

Q. Interest and rents, 1921, in that report, $191,421. Investment profits $132,369. Investment losses, $6,021. Investment expenses, $3,971. Net investment profit, $313,797. Does your deposit capital for the period of five years amount to $1,586,000?
A. Yes, sir.

[fol. 828] Mr. Folonie: Object to the multiplication of the capital by the number of years as improper and an erroneous method of computation.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. Will you add together your interest and rents for the five years, and your investment profits for the same period of time, and give me the total?

Mr. Folonie: Make the same objection as we did to the question respecting the year 1919, asking for similar information respecting that year.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. How much did the total of the investment profits, interest and rents amount to?

A. $1,127,126.

Q. Now, what do your total net investment profits amount to?

Mr. Folonie: Same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

A. $624,656.

[fol. 829] Q. Now, will you figure that against your capital deposit for the five years of $1,586,080, and state what percentage of profit was made—or earnings upon that capital stock——

Mr. Folonie (interrupting): Same objection.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Q. (Continuing:) —or deposit capital?

A. 39.38 per cent.

Q. Now, you say that you brought in your items from your office relative to automobile insurance losses in the State of Missouri for the 5-year period?

A. Yes, sir.

Q. Will you give me the percentage of automobile insurance losses for the period—of the company or companies? What company or companies did you bring in?

A. I brought them for all of it.

Q. Well, one of them didn't do business in Missouri except three years, did it?

A. That is The California.

Q. Well, get one of the big companies. What is the name of that? The Commercial Union Assurance Company?

A. Yes, sir.

The Referee: We will now take a recess of ten minutes.

(Which was accordingly done.)

Mr. Jacobs:

Q. Now, motor insurance for the Commercial Union Assurance Company, Mr. Groth, for 1917; what was your per-[fol. 830] centage of loss?

A. What company are you referring to now?

Q. That is The Commercial Union Assurance Company.

A. 31.4 per cent.

Q. How is that?

A. 31.4 per cent.

Q. On the Commercial Union?

A. Yes, sir.

Q. Wait till I get my figures on the report here. Now, what were your premiums for motor vehicles for 1917, The Commercial Union Assurance Company?

A. 85,483.

Q. Now, I want to get clear on this matter.

Mr. Folonie: There are two Commercial Unions. You may have the wrong one. Commercial Union Assurance, and Commercial Union Fire.

Mr. Jacobs: I have The Commercial Union Assurance Company. This is the underwriting experience by classes for 1917 I am showing you, isn't it?

A. Yes.

Mr. Jacobs:

Q. As reported to the State of Missouri?

A. Yes.

Q. Now, under the heading "Motor vehicles," your premiums were $16,487.22, weren't they?

Mr. Folonie: As shown on that blank.

Mr. Jacobs:

Q. As shown by the classification blank?

A. Yes.

Q. Your losses: What were they? $12,756.99?

A. Yes.

Mr. Folonie: You were reading from that blank?

Mr. Jacobs: Reading from the underwriting experience by classes.

[fol. 831] The Witness: Yes.

Mr. Jacobs:

Q. What percentage is $12,756.99 of $16,487.22?

Mr. Folonie: Are those the same figures you have there, Mr. Groth?

A. No, sir; they are not. They were probably made up from different sources.

Mr. Jacobs:

Q. These losses were drawn off?

A. Net of reinsurance and salvages. I am not sure whether that was or not.

Q. Isn't it headed "Net premiums and net losses paid" as it appears on this underwriting report of yours?

Mr. Folonie: What figures have you there now that you looked up for him?

A. I have got premiums, $5,483; and losses, $1,786.

Mr. Jacobs:

Q. Well, I have got here on your underwriting experience report that year for that company, filed with Missouri, $16,487 net premiums; $12,756 net losses paid. What is the percentage of losses on the figures as appeared in this underwriting experience by classes report?

A. In that underwriting experience by classes, when that was entered, an arrangement we have with the American Central Insurance Company whereby we took over 50 per cent of their liability.

Q. You also took over their premiums, didn't you?

A. But I didn't bring it onto the book record where I got these losses from.

Q. Let's take the losses appearing on your report to the State of Missouri. What percentage of losses is that?

A. That is about 77 per cent.

[fol. 832] Q. All right. Now, for the following year. You have the five years in your hands there—the reports of your company, underwriting experience in Missouri. Now, there is none for 1918. There was no report on motor vehicle premiums or losses for 1918, was there?

A. No, sir.

Q. Well, go to 1919, then.

Mr. Folonie (interrupting):

Q. Did you have any that year, in fact?

A. Well, they were not entered that year. Yes, we did. $7,943 premiums, and $4,408 losses.

Mr. Jacobs:

Q. Making a loss ratio of what, roughly?

A. Making a loss ratio of about 39 per cent.

Q. Read that again.

A. $7,943 premiums—no wait a minute.

Q. Try that again.

A. $8,021 premiums, against $4,400 losses.

Q. And that was——

A. (Interrupting.) That gave you a ratio of about 50 per cent plus.

Q. Yes, 50 per cent plus. All right. Now, look at 1919.

Mr. Folonie: Understand there isn't any figure on the underwriting experience that year at all.

Mr. Jacobs: It is not in the record, no; but there is for 1919 on that underwriting experience for that company.

A. What record do you want now?

Mr. Jacobs:

Q. The underwriting for 1919.

A. Had a premium of $18,173.

[fol. 833] Q. What were your losses?

A. Losses of $5,446.

Q. And that makes what percentage of losses?

A. That makes a loss percentage of 30 per cent.

Q. What was the following year, 1920, as it appears from the underwriting experience by classes of your company, reported to Missouri?

A. $35,469.

Q. What were your losses?

A. $17,463.

Q. Making a loss per cent of what?

A. About 50 per cent.

Q. Take the next year, 1921, as appearing in the underwriting experience by classes report, as filed with Missouri, that company?

A. $26,286, premiums.

Q. What were your losses?

A. $40,472.

Q. What was your loss ratio 1921, on your automobile and motor vehicle business?

A. That is about 150 per cent.

Q. About 150 per cent loss ratio for that year wasn't it?

A. Yes, sir.

Q. Do you think that an accurate result upon your computations could be reached, Mr. Groth, by using paid expenses in your computations instead of incurred expenses?

A. No. I think we should use incurred expenses.

Q. You don't think that paid expenses should be used, and an accurate result could thus be reached?

A. No, sir.

Q. You are an accountant, aren't you—certified accountant?

A. No, sir; just an average accountant.

Q. Practical accountant?

A. Yes, sir.

[fol. 834] Q. Upon what basis do you figure earnings?

A. As applied to the one state, or as applied to the business as a whole?

Q. Well, as applied to the business as a whole.

A. Well, I would figure it as—I would figure it on an unearned premium against the incurred expenses, and against incurred losses.

Q. Well, that is your method of computation, but if you were not figuring—do you distinguish between profits and earnings, as an accountant?

A. Yes, I would make a distinction.

Q. Are earnings figured upon investments or upon capital stock?

A. No, I would say earnings were figured on capital stock involved.

Q. On what?

A. On capital stock involved. Are you speaking as of an insurance company now?

Q. You say you would figure it on capital stock involved?

A. Yes.

Q. What way would you have figured it on investment—are earnings ever figured, speaking as an accountant, upon invested capital?

A. Yes, that would be part of an earning.

Q. Have you—if you have no invested capital you can't figure earnings on that basis, can you?

A. No.

Q. That leaves you, then, the alternative of figuring on capital stock, doesn't is?

A. Yes, sir.

Mr. Jacobs: That is all.

[fol. 835] Redirect examination by Mr. Folonie:

Mr. Folonie: May I have your underwriting experience blanks?

Mr. Jacobs: For which company?

Mr. Folonie: All of them.

Q. Now, I wish you would state what amount of premiums, if any, during the five years, 1917 to 1921, as to Commercial Union Assurance Company were not included in these underwriting experience by classes reports. Asking now for the parts that were omitted from the underwriting experience by classes, if any?

A. For 1917, the net reinsurance assumed—are you talking about 1917 now?

Q. I am taking it year by year; yes.

A. There was nothing omitted in the year 1917 (referring to sheet).

Q. Were there any of the total direct premiums on all other classes that were not reported on the classification report for that year?

A. Question please, again.

(Question read by the reporter.)

A. Yes, there were.

Q. How much for 1917?

A. $37,277.

Q. How much for 1918?

A. $43,664.

Q. How much for 1920?

A. $6,134.

Q. How much for 1921?

A. $6,330.

Q. Now, your underwriting experience by classes blank, therefore, did not comprehend all of the business done by you in the state?

A. No, sir.

Q. Now, the year 19—omitting the year 1917 from this inquiry, but going to the years 1918, 1919, 1920 [fol. 836] and 1921, did those underwriting experience blanks for those years that I mentioned, take into account your assumed reinsurance—eliminating 1917, now?

A. No, sir.

Q. Do they take into account your ceded reinsurance?

A. No, sir.

Q. Now, does 1917 take into account your reinsurance

assumed and ceded in companies authorized to do business in Missouri?

A. It does.

Q. Now, if you add the 1917 then, include your net business without taking into account assumed and ceded reinsurance, and the subsequent years take in your direct writings only——

A. (Interrupting.) Yes, sir.

Q. (Continuing:) —if you add those together, and add together the net business for one year, taking into account assumed and ceded reinsurance, and add to it four years where you have only the figures on your direct writings, what is your result? Is it a direct writings, or is it an authorized net basis? What is it if you add them together?

A. It is an erroneous calculation. It will lead to an erroneous result.

Q. Now, your interest on unearned premiums on Missouri business: What part of your unearned premiums, for which you set up a reserve in Missouri as of a given date, say, December 31, 1916; will that unearned premium amount remain the same during the year 1917 if you continue in business, or will it change from day to day?

A. It will change from day to day.

Q. Will the unearned premium amount exceed on Decem-[fol. 837] ber 31—will the amount existing on December 31, 1917, be indicative of what that unearned premium was at different dates during the year?

A. No, it will not.

Q. Is there any way known to you by which you can state what that unearned premium of your company was, even approximately, for an average during a year, as distinguished from the amount on a given date?

A. No, sir.

Q. Are you able to say how much of your unearned premium as it existed at different times during these given years, say, for example 1917, how much of that had in fact been collected and reduced to possession by your company by December 31 of a given year?

A. No, sir.

Q. Is there any part of it which would be known to you to be in uncollected form?

A. No, sir.

Q. Are the agency balances paid contemporaneously with the writing of the business, or do they come forward at a later time?

A. They come forward at a later time.

Q. The portion which you have not collected from an agent, I assume that part of it you would not be in position to invest?

A. No, sir.

Q. Are you able to state what portion that you have collected, how much of it is kept in cash or uninvested form to meet the payment of losses and expenses?

A. I cannot state that.

Q. Is there any method known to you, from examination of your books, for ascertaining either what the amount of [fol. 838] the unearned premium was during the course of a given year, or what part of it was in invested form during that year?

A. No, sir.

Q. Now, when you gave a figure as to what the interest earned or unearned premiums on Missouri business was, when you wrote down a figure in these classification reports, how did you make your figure?

A. I took the premiums of the United States as a whole, to the unearned premiums of the United States, and took that percentage of the premiums written for a certain year in Missouri, and took the average of 3 per cent as an investment percentage.

Q. That treated the unearned premiums of Missouri as being all invested, then?

A. Yes, sir.

Q. And treated them as all collected?

A. Yes, sir.

Q. I think you have already stated that you know that is not a fact?

A. I do.

Q. Then I judge that your calculation here you recognize to be incorrect as to your interest on unearned premium?

A. I do.

Q. Do you know of any method in calculating it with any reasonable certainty, and ascertaining the portion of your —what the unearned premiums were during a given period; what portion there were in fact collected and on

hand, and what portion of such collected amount was in turn in invested form?

A. No, I have no way of telling.

Q. Now, the rate which you applied to the entire unearned premium of Missouri, did you take the amount as existing on December 31 of the given year as the [fol. 839] amount to which you applied this interest rate you have mentioned?

A. Yes, sir.

Q. So that whether the amount so existing on December 31 as your unearned premium reserve was the amount which you in fact had in unearned premiums during the year you are not able to say?

A. No, sir.

Q. Now, in the calculations which you have made for us here, and which you recited on your direct examination in making calculation of expenses and losses, have you undertaken to calculate your entire losses and expenses, or only those parts which related to the business, or the premiums which you put down, namely, net premiums after taking into account assumed reinsurance and ceded reinsurance?

A. Yes, sir.

Q. Taken the part that related to those?

A. Yes, sir.

Q. Now, in—counsel in interrogating you, called your attention respecting the California Insurance Company to the figure of $345, the incurred losses for 1919; called your attention to the fact the incurred losses for 1921 were $22,490; and called your attention to the fact that your business was on an ascending scale of business. Now, in making your computations, did you, as he apparently assumed, add in this $345, the incurred losses, and deduct out the incurred losses of $22,000 at the end, in making your calculations?

A. No, sir.

Mr. Jacobs: Object, Your Honor, to any statement that I [fol. 840] assumed anything excepting what appeared on the face of that record from which the witness was testifying.

The Referee: The record will show.

Mr. Folonie:

Q. Now, to direct your attention for the court's information as to the comparison of losses paid and incurred losses for the State of Missouri for the year 1919, what was the total amount of your net losses paid?

A. $345.

Q. What was the amount of your incurred losses for that same year?

A. $345.

Q. So your paid losses and incurred losses were exactly the same for the year 1919, were they?

A. Yes, sir.

Q. Take for the year 1921: What were your paid losses?

A. $22,587.

Q. And what were the incurred losses for that same year?

A. $22,490.

Q. So that your incurred losses were a small amount—less than $100 difference between the two figures on that year?

A. Yes, sir.

Q. Counsel interrogated you whether, in your methods of putting in some of its expenses, whether the part of the New York and Denver head office expenses would not be charged to states in the Chicago territory. Is it not a fact that part of the expenses of the Chicago territory were likewise already charged to states in which New York and Denver were situated?

A. Yes, sir.

[fol. 841] The Referee: Q. That home office expense, if I understand Mr. Groth, is proportioned among the several states according to the amount of business done in those states?

A. Yes, sir.

The Referee: Q. As compared to the total amount of business done in the United States?

A. Yes, sir.

Mr. Folonie:

Q. Now, have you any way from your records, Mr. Groth, of knowing of the surplus of your company, or how much

of its invested assets have been sent to this company from the head office at England?

A. Not any other than what the annual statement shows, with which I had nothing to do.

Q. I am talking about the accretion of the surplus as to where the money came from originally, whether it was derived from premium income or money paid in by stockholders, or how it was originally derived?

A. I don't know.

Q. Are you informed so that you are in position to testify whether the profits and losses on investments are shown by the changes in the market value of such securities, even though they were held by the company over the year without disposition, or whether the profits or losses are taken only on the sale of securities?

A. I don't know.

Mr. Folonie (addressing Mr. McGee): May I have one of the annual statements? It don't make any difference which one.

Mr. Folonie:

Q. Now, you have been interrogated, Mr. Groth, as to in- [fol. 852] vestments of your company, and I show you the Palatine annual statement for the year 1917, on which, at page 8, appears "Underwriting and Investment Exhibit," page 8 of the underwriting exhibit; page 9 the "Investment Exhibit." Is that, in general, the way in which these annual statements are made up as to the information therein required—not asking about the intimate detail now, but the general method of returning these annual statements.

A. Yes, sir.

Mr. Folonie: I shall offer in evidence, if the court please, pages 8 and 9 of this statement, and wish to couple my offer with the statement that we do not in any wise withdraw our objections as to the propriety of admitting any evidence of investments at all, but as the witness has been interrogated as to what is in the statements, I want the court to be informed as to the method in which this report is called for by the printed portion, so that the court may more understandingly rule upon the objections hereafter as to the underwriting exhibit and the investment exhibit and the items

therein contained. For that purpose, I offer pages 8 and 9 of this exhibit.

Mr. Jacobs: What year is that?

Mr. Folonie: 1917.

(Whereupon, the pages so referred to were by the reporter at the time duly marked "Plaintiffs' Exhibit No. 69, Blume," and "Plaintiffs' Exhibit No. 70, Blume;" respectively; and are, in words and figures, as follows, to-wit:)

[fol. 843] (Said exhibit is on file in this court as per stipulation.)

Mr. Folonie:

Q. Mr. Groth, were these annual statement blanks, so far as the printed portion of them was concerned, furnished by the State of Missouri by its Insurance Department for your guidance and for you to fill in?

A. Yes, sir.

Q. And you furnished the written figures that are contained in it to complete the blanks?

A. I personally did not do it—the greater percentage of the figures in these annual statement blanks were filled in by our New York office.

Q. When I say "you," I had in mind at this time that your company filled in the blanks, and I understand from your previous testimony that the—particularly, about the investment portion, that came from your home office?

A. Yes, sir.

Q. Now, the losses that counsel had you calculate from this underwriting experience by classes, from these blanks, do those losses as they are set out take in contemplation the losses on the so-called unregulated classes of business or only the losses on the regulated classes?

A. Losses on regulated classes.

Q. By "regulated classes," you mean fire, lightning, hail, tornado, windstorm and cyclone?

A. Yes, sir.

Q. And those figures are exclusive of the premiums, losses and expenses of the remainder of your business?

A. Yes, sir.

[fol. 844] Q. And also those blanks are exclusive of your assumed reinsurance and your ceded reinsurance?

A. Yes, sir.

Q. Now, you testified there were some duplications in your expense items as they appeared on the back of some of these blanks. Were those duplications made by you with any intent to do anything improper or wrongful?

Mr. Jacobs: One minute. The defendant objects to that question as calling for a mere self-serving statement. The record that was submitted and report that was submitted was the only competent testimony concerning that matter:

The Referee: Overruled.

(To which action and ruling the defendant, by counsel, then and there at the time duly excepted and still excepts.)

A. I made it up to the best of my belief as to what was required.

Mr. Folonie:

Q. Well, you do recognize the fact, do you not, that the information as there given on these underwriting experience by classes blanks is, in fact, incorrect?

A. Yes, sir.

Q. The calculations that you have made here and testified to on your direct examination, and contained in the tabulations, and which have been offered in evidence—have duplications of that kind been eliminated from those calculations?

A. Yes, sir.

[fol. 845] Q. Are those calculations according to the best of your knowledge and belief correct, according to your books and records?

A. Yes, sir.

Q. Did your company, as far as you know, have any other capital invested in the State of Missouri during any of this five years?

A. Not to my knowledge.

Mr. Folonie: That is all.

Recross-examination by Mr. Jacobs:

Q. Now, I believe you testified a moment ago that your losses did not cover—as you testified, did not cover non-regulated insurance?

A. Yes, sir.

Q. Now, did you include in your report automobile insurance?

A. On the underwriting experience?

Q. Yes.

A. As a 1-line entry, yes.

Q. Did you include therein sprinkler and leakage?

A. Yes, sir.

Q. Did you include registered mail?

A. Yes, sir.

Q. Did you include explosion?

A. Yes, sir.

Q. And what automobile insurance—of the automobile insurance reported only a small part is fire, is fire, isn't it?

A. Yes.

Q. So to that extent, those three in their entirety and a large part of the automobile-vehicle insurance were losses on non-regulated insurance, weren't they?

A. Yes.

Q. Now, with reference to the duplication about which you testified, as they appeared on your underwriting reports to the State of Missouri, before you made those re- [fol. 846] ports to Missouri containing those duplications, did you consult with representatives of other companies?

A. I did, yes.

Q. And did you and the representatives of other companies concur that those duplications were called for by the form of the report?

A. Are you alluding now to previous years?

Q. To the 5-year period?

A. Five-year period. Now, what is the last question, please?

Mr. Jacobs: Read the question to him, Mr. Blume, please.

(Question read by the reporter.)

A. For previous years, yes.

Q. And all of you understood that you were to put the duplications in, and did so, after this conference?

A. Well, those that I talked with spoke that way.

Q. Did you talk to Mr. Beatty about that?

A. I did.

Q. And did he feel—did he understand that those duplications were called for?

A. Well, he interpreted it just the same as I did, when we made the previous reports of five years. That they were called for.

Q. And he represented the Association of Insurance Companies?

A. I don't know who he represents.

Q. Well, you testified yesterday that he appeared for the associated companies?

A. Yes. I don't know who they are— I don't know who he represents.

Q. But you know he represents some kind of an association of insurance companies?

A. Yes, sir.

[fol. 847] Q. Now, with reference to this form that was offered here—that is, the annual statement report, do you know how that form was adopted?

A. This last one?

Q. The one that was offered here by representatives of the plaintiffs?

A. What year was that, may I ask?

Q. That is 1917.

A. I don't know the condition under which that form was adopted, no. But I have knowledge that a later form was adopted by the insurance commissioners in a convention.

Q. After consultation with the companies, wasn't it?

A. Yes, sir.

Q. Now, you spoke about investments, and Mr. Folonie asked you about them depending upon the rise and fall of the market on stocks. Now, have you observed, in going over these reports for this 5-year period, that practically invariably your investment losses greatly exceeded your investment profits?

A. Yes.

Q. And your earnings came from interest earnings upon your surplus and upon your unearned premium reserve, didn't they?

A. Yes.

Q. So, if there was any money sent over here from England and invested in stocks in this country, the charge appears in your records—the losses were much greater than the gains, weren't they?

A. Yes, if such were the case.

Q. Yes. Now, the fact of the matter is, that what has

been transpiring, as it appears on the face of these [fol. 848] records, Mr. Groth, there were considerable earnings upon your unearned premium reserve and your surplus, but when the investments were made in industrial stocks there were always great losses—practically always?

Mr. Folonie: Object to any assumption on investments in industrial stocks.

Mr. Jacobs:

Q. Well, stocks, then.

Mr. Folonie: Stocks, either.

Mr. Jacobs: I am using the term of Mr. Folonie himself, when he used the term, "all depending on rise and fall of stocks."

Mr. Folonie: I used the term "stock market" in the broad sense.

The Referee: The witness may qualify his answer according to his knowledge. Objection overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs: Now, read the question, Mr. Blume.

(Question read by the reporter.)

Mr. Jacobs:

hat is a fact, isn't it?

M. Leahy: There is no showing here, is there, that this witness knows?

Mr. Jacobs: I mean over this definite period upon the records as you have read them in this court.

Mr. Folonie: Not one thing here to show that they owned a share of stock of any kind.

[fol. 849] The Witness: It would show that the investments made were made at a loss, but that they were—what particular investments they were, I am not qualified to say.

Mr. Jacobs:

Q. That's all right. The reason I asked particularly about stocks, and I assumed you knew because you an-

swered the question, was Mr. Folonie's directing your mind to the rise and fall of the market on stocks. You remember that question he asked you, don't you?

A. Yes, but I had the same thought that he tried to convey: That the company, from my knowledge, does not invest much in stocks—that is, from what knowledge I have. It is mostly in bonds.

Q. What kind of bonds?

A. I am not qualified to say what. The annual statement will disclose that.

Q. You mean mortgage bonds?

A. Both. Both mortgage bonds and industrial bonds.

Q. If you were investing in mortgage bonds, you wouldn't expect these large and almost invariable losses, would you, on investments?

Mr. Hogsett: We object to arguing on that.

Mr. Jacobs: Withdraw the question.

Mr. Jacobs:

Q. The investments speak for themselves on the records, don't they—the outcome of them?

A. Yes, sir.

Q. Now, I notice Mr. Folonie compared these two years of the California Company's brief experience during that 5 year period in Missouri, as to paid and incurred losses. What would you state they were? Does that hold invariably? Is that a general truth?

[fol. 850] A. That the one year of current losses will not conflict with the next year's?

Q. No. That the paid and incurred losses equalize?

A. No, it does not.

Q. All right. Now, with reference to the unearned premium reserve and its investment: You said something about you couldn't tell from day to day what your unearned premium reserve was. In other words, it changes from time to time; is that right?

A. Yes, sir.

Q. Now, you also testified yesterday that your company did a business on a cash basis, saving its farm business which it did on the basis of bankable notes bearing a rate of 6 per cent interest, didn't you?

A. Yes, sir.

Q. So that over a period of five years, as an accountant, you could give a reasonably accurate figure of what your unearned premium reserve was for that period, couldn't you?

A. No, sir; I couldn't.

Q. Not those you did business on a cash basis?

A. No.

Q. And over a period of five years?

A. No.

Q. You wouldn't know what your unearned premium reserve was?

A. Not on an accurate basis; no, sir.

Q. You wouldn't be more than thirty days off, would you? You couldn't be more than thirty days off, could you?

A. Well, the manner—the fact that a premium is paid in cash does not give the company the right to call it an earned premium.

[fol. 851] Q. I understand that but it gives the company the right on its books, to say how much unearned premium reserve it has in its hands, doesn't it?

A. Cash transactions mean nothing to them.

Q. Well, the money is in your hands, isn't it?

A. Yes.

Q. And it becomes unearned premium reserve until it is earned, or until there are cancellations calling for return premiums, doesn't it?

A. Yes.

Q. And you know how much money you have got on hands, don't you?

A. Yes.

Q. And over a period of five years, you would know what the results were, and how much unearned premium reserve you had on that period of time, wouldn't you?

A. That is true, but you would have to make your unearned premium reserve practically every day, then, to get an accurate result; and that would be predicated on the agreed ratio which would have to stand as unearned premium reserve.

Q. You know how much cash—your books would show how much cash you carried as unearned premium reserve, wouldn't it, during a period of five years?

A. Well, I don't know as a cash transaction enters into this at all.

Q. Well, it does to the extent that the money comes in your hands, doesn't it?

A. Yes.

Q. I say, when we eliminate the question of credit. We know the money is in your hands, don't we—because you did a cash business?

A. Yes, but taking—you are taking it at a period at the end of the year when the December premiums have not yet [fol. 852] been paid for, and that would throw that all out of line again.

Q. Yes, but over a 5-year period, there wouldn't be but thirty days out, would there?

A. Allowing for bad debts on those policies that had been extended—time payment on them.

Mr. Folonie: Object to any assumption that the unearned premium as of a given date is at all indicative of the unearned premium over a period.

The Referee: Overruled.

(To which action and ruling of the referee, the plaintiffs by counsel then and there at the time duly excepted and still except.)

Mr. Jacobs:

Q. You would know what bad debts you had over the 5-year period, wouldn't you, with the possible exception of the last few days, because you had gotten the money?

A. Yes.

Q. And it eliminates the question of bad debts when you once get the money in your possession, doesn't it?

A. Yes.

Q. Now, with reference to the investment of unearned premium reserve, you got that information from your home office, didn't you?

A. Yes, we got it on an approximate basis.

Q. They sent it to you?

A. Yes.

Q. And you included those figures in your report to the State of Missouri, didn't you?

A. Yes.

Q. Now, let me ask you what reinsurance is?

Mr. Hogsett: Haven't you been all over that, Mr. Jacobs? [fol. 853] Mr. Jacobs: Not with this witness.

Mr. Jacobs:

Q. Reinsurance—you mean what the—what is reinsurance?

A. Reinsurance is the ceding to another company of that part of the liability of a policy that the assuming company does not care to carry as a liability.

Q. And a corresponding giving to the other company of a premium—proportionate part of the premium?

A. And a premium based on a pro rata share of that liability.

Q. Now, that is ceded reinsurance?

A. Yes, sir.

Q. And what is the assumed reinsurance?

A. Assumed reinsurance is that reinsurance taken on by a company from another company of liability, that that company does not care to carry for themselves—and the premium proportionately paid.

Q. And a proportionate premium paid?

Mr. Folonie (interrupting):

Q. One is just the converse of the other?

A. Yes.

Mr. Jacobs:

Q. And doing business, as Mr. Folonie suggested, with admitted companies in the State of Missouri. But the net result of reinsurance——

Mr. Folonie (interrupting): Who gets the premium, the assuming company or the ceding company? Who gets the commission?

A. The assuming company gets the premium, and the ceding company gets the commission.

Mr. Jacobs:

Q. Now, you are doing business with the admitted companies in the State of Missouri—you are ceding insurance and assuming insurance?

A. Yes.

[fol. 854] Q. The net result of that operation in a year's time is a complete circle, isn't it, and doesn't change the figures at all on the basis of direct insurance, does it?

A. Yes.

Q. How does it change it?

A. Why, one company may take the greater line—are you speaking of an individual company?

Q. I am speaking—these companies all do business in the State of Missouri, what you call admitted companies?

A. Yes.

Q. Now, among your companies, the various companies that are doing business in the State of Missouri, you all do what is called a "direct business," don't you?

A. Yes.

Q. You all do what is called "reinsurance business"?

A. Yes.

Q. Ceding and assuming?

A. Yes.

Q. Now, the net result of that business, Mr. Groth, is that it all evens itself out in the circle, doesn't it?

A. Yes.

Q. And your gross premiums and premiums received and losses paid, or losses incurred, whichever you want to figure it, will figure out just the same upon a direct basis as though you never figured any reinsurance, wouldn't they?

A. If you confine the operations of the company to the State of Missouri and take the result of all companies as a whole, the grand total of all premiums as shown by the companies would not make any difference; but you take any individual company—it would suffer thereby. One company may assume greater reinsurance than another com- [fol. 855] pany. But, taking it as a whole, it would even itself out—if all companies' totals were taken as a grand total.

The Referee: Q. You don't cede business to any companies except those admitted in Missouri?

A. No, sir.

The Referee: Q. And you don't assume business except from companies admitted to do business in Missouri?

A. No, sir.

Mr. Jacobs:

Q. Now, in taking these 158 companies, the admitted companies who appear here as plaintiffs, among them the five companies whom you represent, and that do this business around among themselves of ceding and assuming

reinsurance—at the end of the years, the net result, figuring the premiums ceded, the insurance ceded, the premiums given or ceded, or whatever you call it, all liability assumed and the converse of it when you take it the other way around—and you arrive at the same figure you would if you figured the whole thing on the basis of direct insurance; don't you?

Mr. Hogsett: He answered that.

A. Yes, I will have to admit you have—that they would.

Mr. Jacobs:

Q. All right. Then, if that is a fact, then this 1917 underwriting report which is one year, and covering, say, all the companies which it does, that do business, namely, the admitted companies in the State of Missouri—whenever you have made your figures at the end of 1917, it doesn't make any difference whether you have figured in the reinsurance [fol. 856] or whether you just figured it on a direct basis? Your result at the end of the year, figuring all of the company's business, is the same, isn't it?

Mr. Leahy: He doesn't make the report to all of them—for all of them.

A. If all companies made the same report, yes.

Mr. Jacobs:

Q. They all have to make it, if they are admitted companies. Every one of them makes a report on exactly the same form that you make your report on, don't they?

A. Yes.

Q. And for 1917, they made a direct report; and, in 1917, they all had to make it on the basis of assumed and ceded reinsurance, didn't they?

A. Yes.

Mr. Jacobs: I think that is all.

The Referee: Anything further with this witness, gentlemen?

Mr. Folonie: Nothing more.

Mr. Jacobs: That is all, Mr. Groth, thank you.

(Witness excused.)

The Referee: We will adjourn until 10 o'clock tomorrow morning.

(Whereupon, an adjournment was taken until 10 o'clock the following morning, the same being Wednesday, the 11th day of July, A. D. 1923, at which time parties reconvened at the same place, and the following proceedings were had.)

Mr. Folonie: Now, if the court please, counsel for the plaintiffs and for defendant, have entered into a written [fol. 857] stipulation designed to facilitate and lessen the volume of proof otherwise necessary to be produced, and we now produce and offer in evidence such written stipulation and ask that it may be made a part of the record.

The Referee: Stipulation signed by counsel for both sides?

Mr. Folonie: Yes, if the court please.

Mr. Jacobs: Yes, signed by counsel for both sides.

The Referee: Very good. It is so ordered.

(Which said stipulation so referred to, being so offered, introduced and admitted in evidence, and having been by the reporter marked "Exhibit A. Blume," is in words and figures, as follows, to wit:)

EXHIBIT A. BLUME

In the Circuit Court of Cole County, Missouri

No. 4566

THE AETNA INSURANCE COMPANY ET AL., PLAINTIFFS,

v.

BEN C. HYDE, SUPERINTENDENT OF THE INSURANCE DEPARTMENT OF THE STATE OF MISSOURI, DEFENDANT

Stipulation

It is hereby stipulated and agreed by and between plaintiffs and defendant in the above entitled cause through their respective attorneys of record as follows:

The hearing will be adjourned to a time to be fixed by the referee.

During the adjournment the plaintiffs will assemble and tabulate the figures as to premiums, losses and expenses of the remaining companies on the form of blanks heretofore used in the testimony so far taken, except as [fol. 858] to losses, and as to losses, the tabulated figures as aforesaid will be divided, wherever the books of the companies will permit, into net losses on direct business, on ceded reinsurance and on assumed reinsurance, in authorized companies; plaintiffs to furnish copies thereof to defendant's counsel as the same are assembled and tabulated it being understood that defendant is objecting to the method of computation.

At the resumption of the taking of testimony before the referee the statements of figures so assembled and tabulated will be offered and received in evidence, as though verified by the respective company accountants, or other employees, testifying as witnesses under oath herein, it being agreed that if the respective company accountants or employees were produced and sworn they would testify to the correctness of the figures so tabulated and offered in evidence.

If defendant's counsel desire to cross-examine the accountant or any other representative, employee, officer, agent or director of any particular company or companies, they will notify plaintiffs' counsel and plaintiffs' counsel will within a reasonable time thereafter produce him for cross-examination. The defendant also has the right to call for and examine the books, records, documents and papers of any particular company or companies to verify the figures so tabulated and offered in evidence and for any other purpose.

It is understood by the parties that there are certain companies whose figures cannot be secured. As to such companies whose figures cannot be obtained, because [fol. 859] of their being in the hand of the Alien Property Custodian, or because of their having discontinued business, or for any reason deemed by the referee to be sufficient, it is agreed that the figures of such companies shall be disregarded in reaching a determination of the issues herein.

It is further agreed as to those companies whose accountants or employees are examined before the adjournment above referred to is taken, that if accountants or em-

ployees from the home offices or loss departments of such companies were produced and sworn as witnesses they would respectively verify and testify to the correctness of the home office figures and loss figures of such companies given in evidence; defendant, however, is not understood as accepting such figures and tabulations and methods used and employed, but only admitting that if such witnesses were called they would testify that such figures and tabulations were correct.

The defendant does not by this stipulation admit the correctness of any figures offered in evidence by plaintiffs; does not waive any right of any kind in the suit pending, except as herein specifically agreed; does not admit that the basis upon which the figures are tabulated is the correct basis of tabulation; does not admit the correctness of the method used by the plaintiffs; does not adopt the theory of the plaintiffs as the true theory required by the laws of Missouri; does not waive the provision of the laws of the State of Missouri which require the plaintiffs in assuming [fol. 880] the burden of proof in this case to prove their case by legal and competent evidence, except as herein specifically agreed; but defendant reserves the right to dispute the correctness of the figures; the method of tabulation, the theory of plaintiffs in this trial and reserves the right to offer countervailing testimony and different methods of computation, tabulation and theory.

It is further agreed that either party may offer any additional testimony, whether cumulative or not, to establish any of the issues in this case, and that this stipulation is not intended to waive the right either of the parties herein have to present their theory of the case so that a full and complete understanding and hearing may be had by both of the parties hereto; it being the purpose of this stipulation to avoid the necessity of taking testimony witnesses offered by the plaintiffs as to tabulations and results, and to allow such tabulations and results to be offered in evidence the same as if said witnesses had testified; both parties reserve all the rights guaranteed to them by the law.

Dated this 11th day of July, 1923.

(Signed) Bates, Hicks & Folonie, Leahy, Saunders & Walther, Cockrill & Armistead, Hogsett & Boyle, Attorneys for Plaintiff. John T. Barker, Floyd Jacobs, Attorneys for Defendant."

[fol. 861] The Referee: By agreement of parties, this hearing is now adjourned to September 17, 1923, at the hour of 10 o'clock a. m., and to 818 Scarritt Building, in Kansas City, Missouri, at which time and place the further hearing of the case will be resumed, unless the referee shall then or before that time fix a different time or place. Is that order satisfactory?

Mr. Hogsett: That is agreeable.

Mr. Folonie: I think so.

(Whereupon, an adjournment was taken until the 17th day of September, A. D. 1923, to meet at that date at the law offices of the referee, 818 Scarritt Building, Kansas City, Jackson County, Missouri.)

(Pursuant to adjournment heretofore noted, parties reconvened at the Belmont Hotel, New York, N. Y., on Wednesday, October 10, 1923, at 10 o'clock, a. m.; and thereupon pursuant to agreement of parties present, the further proceedings were continued until the following day, the same being Thursday, October 11, 1923, at the Law Institute, Room 923, Equitable Building, No. 120 Broadway, New York, N. Y. Whereupon, the following proceedings were had:)

Appearances:

For the Plaintiffs: Mr. Robert J. Folonie, Mr. William S. Hogsett, Mr. John S. Leahy and Mr. Ashley Cockrill.

For the Defendant: Mr. John T. Barker.

The Hon. John I. Williamson, Referee, presiding.

[fol. 862] Otho E. Lane, called as a witness on behalf of the plaintiff, having been by the referee first duly sworn, was examined and testified as follows:

Direct examination by Mr. Folonie:

Q. What is your name, please?

A. Otho E. Lane.

Mr. Barker: With what company are you associated, Mr. Lane?

A. The Niagara Insurance Company of New York.

By Mr. Folonie:

Q. Where is its office?

A. 123 Williams Street, this city.

Q. In what business is the Niagara Fire Insurance Company engaged?

A. We are engaged in the insurance business; principally the fire insurance business.

Q. And in that general term "fire insurance," you include the general allied forms of insurance, such as tornado, windstorm and similar lines?

A. Yes. If I understand your question right. We are—our major business is strictly the fire insurance business. That is augmented by lightning, tornado, hail and, in the past, war and riot insurance, and also marine insurance.

Q. Your company also writes automobile insurance?

A. Yes.

Q. Has your company during the years 1917 to the present time and prior to 1917 engaged in that business in the State of Missouri?

A. Yes, continuously so.

Q. What is your office with the Niagara Fire Insurance Company?

A. I am the president of the corporation.

[fol. 863] Q. Will you state briefly, please, your experience in the business of fire insurance, giving us the various associations and connections you have had with it, and take it from your entrance into the business to the present time?

A. I entered the business immediately after graduation from college; taking the position as an inspector in the Insurance Survey Bureau of Chicago.

My duties at that time were to examine and report upon the physical characteristics and conditions of risks throughout the middle west.

After receiving a training there covering a period of approximately two years, I engaged as Special Agent for the Traders Insurance Company of Chicago in the States of Wisconsin and Michigan, remaining there two or three years. I—

Q. (Interrupting.) What was the general nature of your duties there?

A. Just appertaining to the development and care of the agents' business of the company in the territory under my

jurisdiction, which, to be explicit, was the State of Wisconsin and the upper peninsula of Michigan.

I left that company after a service there, as I say of approximately two or three years, I can't recall explicitly just now; I took a similar position with the Providence Washington Insurance Company of Providence, Rhode Island, in substantially the same territory save that I had added to my field the majority of the State of Minnesota.

[fol. 864] I left that company in 1907 and engaged as Special Agent of the Scottish Union & National Insurance Company, a British Corporation, in charge of its field operations in the States of Colorado, Wyoming, New Mexico, Montana, Idaho and Utah.

I left that company in 1912 and became assistant United States Manager for the Yorkshire Insurance Company operating throughout the whole of the United States, with headquarters at New York.

I left the Yorkshire Company in 1916 to become the vice president of my present company.

I was elected president of the Niagara Fire Insurance Company at the end of 1916, and assumed that office at the beginning of 1917. I think that answers your question, sir.

Q. And you have held the position of president since that time, have you?

A. Yes.

Q. In your office as president of your company, do you have general charge and supervision of its affairs in an executive way as presidents of corporations ordinarily do?

A. I do. As I understand the operations of other corporations. My Board looks to me to administer the affairs of the company.

Q. How many states of the Union does your company operate in?

A. We operate in all of the states of the Union save Mississippi and Delaware—and in all of the territories.

Q. When was the Niagara Fire Insurance Company organized and incorporated?

A. In 1850.

[fol. 865] Q. Has it been in the same general line of business ever since that time?

A. It has.

Q. What was the capital of the Niagara Fire Insurance Company when it commenced business?

A. I can't answer that right off hand. I could develop that information by investigation. I think it was $200,000. 78 years ago is quite a time. I haven't got all of that old detail in my mind, Mr. Folonie.

Q. And the capital has been increased from time to time since its organization?

A. It has.

Q. And what is the capital of your company at the present time?

A. $3,000,000.

Q. Does your company have a surplus?

A. It has.

Q. Approximately what is it at this time?

A. $3,000,000.

Q. In the conduct of business of fire insurance is the existence of a surplus fund essential to the conduct of an insurance business?

A. Quite essential.

Q. Will you state the general nature of a surplus of a fire insurance company, take particularly the case of a newly organized company, what factor or part the surplus plays in the conduct of this business and the operation of the business of fire insurance?

A. You are asking me to state the nature of the surplus. I take it you mean to inquire as to the operation of the surplus funds of the company?

Q. Yes.

A. How it would be applied to the business of the corporation?

[fol. 866] Q. That is correct.

A. I take it too, that you mean—that you speak of a New York corporation?

Q. Yes.

A. Under the laws of the State of New York, the statutory capital of an insurance company must remain static. And, under the reserve laws of this state, as the company writes business, it must set up the unearned premium fund, and in order to do that, it would necessarily have to have a surplus related to the volume of premiums it took, because of the fact that the unearned fund in addition to the expenses and to the inevitable losses that would arise through the underwriting operation of the corporation that would

absorb more than the current premium revenue of the company.

Now to restate that concretely, let us presume that this company wanted to take $100,000 in premiums; let us say that its capital was $200,000, the minimum statutory sum, and that it had a like sum of surplus. Its revenue then would be $100,000 from premiums; its expenses, for purposes of illustration let us say, would be 40 per cent of that sum, which would be moderate, would be $40,000. The reserve on that $100,000, assuming they wrote the usual proportion of annual term business, would unquestionably run $65,000 to $70,000. You can readily therefore see that there would be a debit balance of between $5,000 and $10,000 against income and the liability requirements of the company and naturally that debit balance, whatever it was, would have to be supplied from the surplus funds of the company.

[fol. 867] The Referee: Mr. Lane, I notice you stated a while ago that the statutory capital must remain static.

A. I mean by that as soon as there would be an impairment of capital of an insurance corporation of this state, then it would be deemed insolvent and that it would, of course, legally be incompetent to pursue its business.

The Referee: In other words, the statutory capital must remain unimpaired?

A. Yes; and intact. In other words, I mean, to illustrate, a company practically could not operate without a surplus because it would necessarily assail the capital immediately if it did a surplus business.

By Mr. Folonie:

Q. Therefore an insurance corporation entering business with a capital, contributed by stockholders, if there were no contributed stock by stockholders in addition to that capital, would be unable to do insurance business?

A. It could not do a business under the practical conditions that it would necessarily have to operate. It would be—it might be contended that it could operate but practically it would be utterly impossible for it to operate.

Q. What is your observation and knowledge as to whether the encroachments upon the surplus at the beginning of business of the corporate enterprise, are heavy or

light, compared with its conduct of its business at a later stage of its development?

A. The encroachments on the surplus are usually heavier in the early periods of operation than the later periods, for this reason: That the foundation expense of an insurance [fol. 868] company is in general like the foundation expenses of any other mercantile or commercial enterprise. They are higher at first than later because of the inevitable difficulties of organization; because of the unavoidable expenses of projecting, in the face of competition, the merits of that peculiar company.

Now the reserve, or the unearned premium requirements of that company could be regulated if the managment were strong enough to deny themselves business when it was offered by refusing, of course, to write an undue amount of business.

But, to descend to the vernacular, the management of a new insurance company is almost inevitably between the devil and the deep blue sea. It must write business in order to secure a satisfactory per cent ratio and if they do write business, on the other hand, they must supply the reserve requirements, or the unearned premium requirements, that is the dilemma that they inevitably are placed in as beginners.

The Referee: In other words, the initial expense is greater than the normal expense after the company has become established in the business?

A. Yes.

By Mr. Folonie:

Q. To just put it in a phrase: The foundation expenses of the business, the initial expenses of introducing the business, of overcoming the inertia that is always present to any new venture, is higher than it is after the business is established?

A. Yes, sir.

[fol. 869] Q. And is that problem intensified also by the fact that the deposits or reserves cannot have resort to the business coming in and flowing out, after the organization, as distinguished from a new company which must deposit its reserves without having recourse to old business to help it out?

A. Yes—if I properly understand your question. I think it is answered perhaps in this way: To repeat just what I said about my own company, contracted with the beginning company: Our company has been writing a volume of premiums of between seven and eight million dollars annually for the past five or six years. It varies but not more than 33-1/3 per cent. In that time we may have taken more than ten million dollars at our peak volume there. Now provided we do not constantly increase or change the character of the business, that is, that we do not within any reserve period write a different proportion of term business as to the annual business taken, the reserve that will release and run off will approximate the reserve that will be required to set up the unearned premium fund for the business that is just being taken on.

In other words, it is running off at about the same rate it is running on. There is a balance being maintained and manifestly a new company with nothing to run on, cannot maintain that balance.

Q. Yes, you have answered my question as I intended to propound it but did not do very aptly.

During that period from 1917 to 1921 inclusive, did the economic conditions incident to the great war have any effect upon the business of fire insurance, and if so what, [fol. 870] in a general way?

A. It had the same marked effect on our business that it had on every other business. The change of prices, affecting every material cost that we encountered. Affecting, of course, salaries and expenses of every employe that we had; affecting also the fortunes of every assured that we dealt with.

One of the surprising effects it had was the tremendous increase in the volume of business taken by our company particularly, and by all fire insurance companies in general throughout this country and throughout the world. If you stop or pause a moment to think about it, you will see that a pound of coffee, which laid down let us say this port, in 1916, was worth 28 cents—I don't know whether it was worth 28 or 50—I am simply illustrating—that by reason of the war condition that same staple was worth 58 cents; it was insured at the latter price rather than at the former price and, of course, produced more premiums.

On the other hand, however, when you think of it, when we had losses and claims to meet, we had to meet them on those prices. But the effect it had on our business was chiefly of concern to any responsible manager by reason of the burdensome and new problems that it presented in the expense account of our operation, and I don't think in that aspect we were any different than every other general commercial proposition.

The Referee: Pardon me, Mr. Folonie. Did that involve a readjustment of your rates, Mr. Lane?

A. To answer that question strictly, it did. But to answer it substantially, it did not. I mean to explain that [fol. 871] paradox by saying this: That I, amongst several other managing officials of the insurance companies felt at the height of that burden that we should increase our rates and we did succeed in securing a 10 per cent advance in our rates that applied to the business for a period of about 18 or 20 months. It was afterwards reduced, taken off—that 10 per cent was taken off because of the fact that the regulatory powers that apply to our business were displeased with it and felt that we were not entitled to it and so in substance, the insurance business, during the whole period of the war, save for this period of time and for that slight increase of 10 per cent, and up to today, has done its business on pre-war rates and has made all of the adjustments on pre-war rates and has made all of the adjustments that were necessary resulting from any cause, in the administration of its business.

The Referee: In other words, in your judgment, the increased volume of premiums did not off-set the volume of expenses.

A. No. It did not for this reason: That while it is a very pleasant thing to take in, in this business, which is a business of indemnity against a possible future contingency—it is a very comfortable thing to see the premiums rolling in but it is not at all the sound thing to conclude that because the premiums do roll in that they are going to stay in. The losses that mature against previous premiums on a strict earned premium basis, is the only true basis of the business.

[fol. 872] By Mr. Folonie:

Q. You used the expression "term business" as distinguished from annual business or one year business. Define the use of the word "term business," please.

A. Policies originally in the fire insurance business, were written for a period of time covering one year. Customarily they were almost all of them written for a period of one year; and as a matter of fact, in most portions of the world today, save of the United States and Canada, they are still written for a term of one year.

However, in the process of computation, it came to be the custom to write such types of risks for longer policies or periods than one year; for two, three, four or five years; and that business that is written for a longer time than one year is commonly called term business. The great majority of that so-called "term business" is written for either three or five year periods. It consists largely of dwelling houses, their contents, public buildings and their contents, and certain types of buildings occupied for mercantile purposes. Occupancies—buildings as occupancies would be called non-hazardous in our business. The term "non hazardous" does not mean the ordinary meaning of the word "hazardous"—it means not extra hazardous.

The Referee: Five years is the maximum term for which insurance is given?

A. No, strictly speaking it is not. Some business in a very few and closely restricted localities is written even for longer terms than that—ten years. Originally some [fol. 873] of the insurance companies, the older companies in the City of Philadelphia, wrote business on a perpetual term, and in competition with those companies, some small but insignificant amount of premium is still taken in that city on ten-year terms—but it is too insignificant to have any practical weight at all in the business or in the character of the unearned premium fund.

The Referee: Well, is that the maximum term?

A. It is the longest term that I know of, save on some business that is written on a perpetual basis.

By Mr. Folonie:

Q. By that you mean that the policies are written and may not ever be cancelled by the insurance companies?

A. Yes. Nor would they come to a termination by their own terms. The premium would be, of course, very much larger than it would be on the ordinary term business or the annual business.

Q. Those so-called "perpetual" policies, in the State of Pennsylvania, were written by companies having perpetual charters, were they not?

A. Yes, as far as I know.

Q. But in New York, companies all have a limitation time upon their charters, do they not?

A. I can't answer that right out of mind.

Q. Well, speak of your own company then.

A. I can't answer it as to my own company. I think that our charter is determinable, if that is what you mean, although it is a legal point that I am not acquainted with right at the moment.

Q. In any event, the so-called "perpetual" policies are very insignificant in number and are purely local to the [fol. 874] State of Pennsylvania?

A. So far as I know, and they are an anachronism and I only mention them in answer to the query made—and they are interesting, to know that they have been written on that basis. They are of no practical importance or significance at all in the business.

Q. You have used the expression "earned premiums" and have stated that, in your opinion, the earned premium basis was the only one proper for—in the proper consideration of your business. Will you make us a little explanation of that and a definition of the term "earned premium" as you used it?

A. Speaking now of "earned premium" as it would be construed, as the term would be construed from the laws of the State of New York; when an insurance company takes a premium, it may at any time during the course of the policy, out of which the premium consideration arises, be liable to return either a pro rata, or what is known within the business as a short rate proportion of that premium, on the demand of the insured, at any time prior to the lapse of the policy by a passage of time.

Now the law provides that there shall be set up as a liability, a pro rata proportion of that premium. Now as the premium is earned by the lapse of time, it becomes "earned premium." In other words, if the policy is writ-

ten for five years, the premium being $100.00 the reserve would—the unearned proportion of that premium would in practice be set up as a liability at $90.00. Strictly, actuarily speaking, it would be a higher sum than that, but to bring [fol. 875] it to a practical basis the fraction 9-10ths is adopted and applied to the transaction that I speak of.

Now, at the end of the year that unearned sum would be set up at a lesser fraction than 9-10ths. And the difference between the lesser fraction and the sum required at 9-10ths, would be the premium that would have been earned during that year.

Now, applying that same principle to the whole body of premiums written by an insurance company, you arrived at earned premiums. Only from earned premiums can a company in the State of New York, actually bring it to its treasury, earned profits of the underwriting business.

The Referee: In other words, if I understand you: during the life of every policy, there is a portion of the premium which is regarded by the company as a liability and a portion which is regarded as an asset, the amount of the asset is steadily increasing as the term of the policy continues to expire.

A. That is true.

The Referee (continuing:) And the amount of the liability continually decreasing during the same period of time?

A. That is true. Only it should be corrected to this extent. That the insurance companies do not merely regard it as sound business practice to treat that accounting situation in the manner you have described; it is imposed on the insurance companies to so treat it as a matter of statutory requirement.

[fol. 876] By Mr. Folonie:

Q. In practice what office does the earned premium serve in the computation of so-called "underwriting profits"? Give us the formula as according to your judgment, of an underwriting profit, so we may understand what relation the earned premium figure has to the calculation of an underwriting profit.

A. In order to arrive at underwriting profit, the so-called "earned premium" is the only item that can be credited to

the underwriting account. All other entries in the underwriting accounts must be debit entries.

In other words, to pay expenses and to pay losses, to provide for legal liability of unearned premiums, as set up by the statutes, the company must have a balance from premium revenue in excess of the sum of these items that I have mentioned, before it can have any underwriting profit.

And now further—whether I make that clear or not I am not sure, but in the make-up of the account, the earned premium is the only fund that can be properly carried to the credit of the account. The other side of the account must embrace the losses, expenses and increase in reserve, if any—increase in unearned premium reserve, if any.

Q. So, if you were undertaking to ascertain whether your company in a given territory was making an underwriting profit, or an underwriting loss, you would take then the amount of the earned premiums and balance against it the losses and expenses, and the difference would be your underwriting profit or loss?

A. The difference would be our underwriting profit or [fol. 877] loss; so that if the unearned premium fund had been increased—if the unearned premium fund had increased, there would be a debit in the sum of the increase. If it had decreased, on the other hand, there would be a credit necessarily in the earned premium side of the account which would have increased the underwriting profit by the sum of the decrease in the unearned reserve.

Q. If you took a definite period, any one year, and you ascertain the earned premium of your company for that particular period, would the ascertainment of that earned figure necessarily require you to ascertain the shift in the unearned figure to arrive at the earned figure?

A. Yes.

Q. Now if you undertook therefore to find the earned figure for a given year, for a given period, say the year, 1918, in the State of Missouri, if you had the unearned premium figure as of December 31, 1917, and your written premiums for the year, 1918, and your unearned premium figure for December 31, 1918, how would you calculate the earned premiums for that period?

A. You would take the unearned premiums for the end of the year, 1917. You would take the written premiums

for the year, 1918. You would add it to the unearned premium fund as it stood at the end of 1917. You would calculate the reserve on the new—on the result, and debit it against the sum of the other two figures.

Q. In other words, you would take the unearned figure at the beginning——

A. (Interrupting.) You would take the unearned premium fund as it stood at the end of 1917 and to that add [fol. 878] the written premiums for the year 1918. Calculate the reserve on this sum. The reserve then obtained would be either greater or less than the reserve as it stood at the end of 1917. If greater, it would have to be a debit to the underwriting account. If less, it would be a credit in the sum that it was less.

The Referee: Now one question, Mr. Lane. Take a specific instance, say of a policy written for one year, with a premium of $100.00. Assume that six months of that time had expired; roughly speaking you would count then $50.00 of the premium as earned and $50.00 as unearned, I take it.

A. I think that would be the common practice. Now, in our particular company, we do not handle our reserve on that basis. We are now getting into a technical matter that is actuarial. I don't know whether I can make myself clear, but we handle our reserve on what is known as the 24 basis. That is, we divide a year up into 24 parts and we earn or charge ourselves with the unearned premium fund on that fraction. You can see, sir, that if a premium is written on the 20th day of December and you write it with—and you deal with the reserve on that on the fraction that you speak of, that you would only reserve out of a $100.00 premium $50.00. You would only reserve $50.00, despite the fact that premium was taken on the 20th day of December. Do you follow me? Now, by our method, we would reserve 23/24 of that $100.00 sum. It is a closer, fuller reserve. It will produce a fuller reserve [fol. 879] than to use the so-called "box" fraction, or empirical formula, of applying this daily pro rata requirement of the law that has been formulated by the combined opinion of the insurance departments of the country.

The Referee: I was taking your illustration chiefly for the purpose of a further question: Assuming the factors

suggested, that one-half of the premium had been earned, on whatever basis you calculate the earned premiums, and one-half remained unearned, now then, does the experience of fire insurance companies furnish any reasonably certain rule by which you may calculate the proportion of the unearned premiums, which will in the process of time, develop into earned premiums?

A. Why, it will all develop into earned premiums except—of that account. If you are speaking of the loss as it enters the premium account. Mathematically, sir, it might all come out and be earned as time lapses.

The Referee: I have not made my meaning clear. That is not quite my question. There is always a possibility until the expiration of the term for which the policy is written, that a loss may ensue in that particular instance?

A. Yes.

The Referee: Now then, does the experience of the company furnish you with any rule by which you can calculate with any reasonable certainty what proportion of unearned premium will eventuate into earned premium in the usual course of business? Not in reference to a particular policy, but in the general run of your business?

A. Well, if I understand your question, sir, perhaps I [fol. 880] can answer it in a somewhat indirect way: As I just stated, all of the unearned premium fund must in the course of time become earned premium because the element of time is the only consideration that precludes that from earnings as soon as it is taken.

Now losses, of course, intervene between the beginning of the liability and the beginning—the writing of the policy and its maturity; by lapse of time. In other words, we, in the business, say that it matures through time.

Now a company—many do not do it, we, however, do—we correct our reserve on that basis, by taking our losses while we earn a premium by paying the loss, and we call that out of the reserve—we call that debit out of the reserve. If that is what you mean. I think that is the answer to your question. But as a matter of fact, of the reserve, it is not a serious sum at all. It doesn't relieve the reserve in any large figure at all. I think, in a business like ours, it might relieve us of 10 or 15 or 25 thousand a year, in the reserve.

Mr. Folonie: I don't think the witness and the court are directing their thoughts to the same question perhaps, so I will ask two questions designed to bring out both thoughts.

Q. If a policy was written for one year in November and—a one-year policy written in November of a given year, and at December 31st, you sought to make a calculation of the earned and unearned premium upon this policy, then approximately what would the earned and unearned portion of that policy be?

A. It is a one year policy?

[fol. 881] Q. Yes.

A. And the premium is $100.00?

Q. Yes.

A. Policy written in November?

Q. All right.

A. Ordinarily the unearned premium reserve set against that transaction would be $50.00.

Q. Suppose it was written in December, what would be the unearned——

A. (Interrupting.) It would still be $50.00.

Q. Suppose it had been written back in May of that same year?

A. It would be $50.00.

Q. Now take a five year period, what would be the amount of the unearned premium set on a $100.00 deal from—what would be the amount of your reserve on that five year policy, if it were written in May of the given year?

A. You would apply the 9 10ths fraction. But as I stated, some companies apply this law, the premium law, in a very much closer way than is actually required by the accounting method and practices set up by the state authorities, that is by the Insurance Commissioners of the various states.

My own company, as I have pointed out, reserves on a closer basis. You can see, gentlemen, that if you applied this law, which is a strictly daily pro rata proposition, that actuarily it would be an impossibility to work it out. The strict application of the law would be practically an impossibility. Consequently, an intrical formula is set up under which it is worked. Now the formula under which [fol. 882] it is commonly worked is the fraction known as the "box" fractions in the annual statement. If the com-

pany reserves on a heavier basis than that why naturally the authority that is requiring you to reserve is well enough satisfied if you meet it.

Q. In other words, under this "box" fraction theory you would set up $90,00 on a 5-year policy written during the current year, at December 31st—you would set up $90,00, no matter when during the year it had been written?

A. Yes, that is my understanding.

Q. That is all that is required of you by the requirements of the various states?

A. That is correct.

Q. But you in your particular company figure it closer than that?

A. We set up a heavier reserve than that requirement lays on us, but we do not set up a heavier reserve than the strict application of the law requires.

Now by the same token, the reserve when the business decreases, runs off at a faster rate than it ordinarily would. It works both ways, on both sides of the account.

Q. To get at the practice of your company as distinguished from this box fraction rule—if you had this $100,00 premium on a 5-year policy and it was written in May or December of the current year, what would be the amount of reserve as you would set it up?

A. We would set it up on a basis of—I can't answer that on the 5-year policy—it is not in my mind—if it was written on a 1-year policy, and was written after the 15th day of December, we would reserve 23 24ths of the premium, in-

[fol. 883] stead of 12 24ths; as would be reserved under the previous method.

Now the reason I can't answer as to the 5-year policy is that I don't carry that fraction. You can see that in 5 years on a 24 basis—there would be 120 time units involved. That is, there would be 120 half months. Now just what that fraction would work out—the principle is the same.

Q. In other words, you divide your year into half months?

A. Yes. Whether we are dealing with an annual policy, a 3-year policy or a 5-year policy; and your reserve is dependent upon whether it is written the first half or the last half of December or November.

Mr. Folonie: That is what you had in mind, Judge?

The Referee: Not quite.

Mr. Folonie: I will ask one more question then:

Q. If you write a policy on December 31st of the current year and you set aside your reserve and on the 1st day of January, the next following day, the property is wholly destroyed; on the second day of January, what reserve do you have on that policy?

A. We might not do it on the 2nd day, Mr. Folonie, but at a regular period of accounting, if you please, a correction would be made in our unearned premium account, which would take out of that account whatever we had reserved against that particular policy; because it is self evident that if the policy matured by a loss and was cancelled by its terms, we could not be required to reserve a [fol. 884] premium against the contingency that the insured would come and ask for his premium back when it was not owed to him.

Q. In other words, the entire policy has been exhausted and the entire premium becomes earned?

A. The entire premium becomes earned.

Q. And the contract is terminated by the entire loss, which exhausts all of the rights of both parties?

A. Just so. A fire insurance policy—the premium under a fire insurance policy can be earned by one of two methods only: Either by the lapse of time or by the happening of the contingency against which the policy is issued.

Q. To the extent of exhaustion?

A. To the extent of exhaustion.

Mr. Folonie: Now, if I haven't clarified it to the court——

The Referee (interrupting): This is what I have in mind, Mr. Lane: To put it in a different form: Assuming that your company desires to sell all of its business outright, you have a certain volume of outstanding insurance, of varying terms and times of maturity, and all of it subject to the contingency of loss, of course, as to any particular item at any time.

Now then, in determining the value of that insurance, your books will show what proportion of the premiums you then regard as earned premiums on a given date, say this day?

A. Yes.

[fol. 885] The Referee: Your books would show what proportion of the premium you regarded as unearned premium?

A. Yes.

The Referee: Very good. Now then, does the experience of companies in your line of business furnish you with any reasonably certain rule by which you can determine what amount the unearned premium will, with reasonable certainty develop into earned premium, during the period for which the insurance is written?

(No answer by the witness.)

The Referee: Perhaps I don't make my meaning clear. If you undertook to determine the value of the unearned premium, does the experience of insurance companies furnish you with any rule by which you can calculate approximately what proportion of the unearned premium will become earned premium in the usual course of business?

A. Well, I think, sir, that we must define our terms. Now to answer your question strictly I have got to give you the same answer I did before: That is, all of that premium fund will, in the course of time, become earned premium, but how much the company will be permitted, under the terms of its policies to keep, is a question that no one could possibly answer because that would be tantamount to asking me what the loss ratio on that business might be against its termination and nobody could answer you that. That would be entirely a matter of judgment. [fol. 886] The Referee: That is just exactly what I am getting at.

The Witness: I can give you my judgment on that, if that is what you want. If you just look at this unearned premium fund as a liability in the accounting of an insurance company; it stands in their books as a liability. Now it is a constantly shifting liability. It is determined every three months in the State of New York. It is required that my company report its full condition every three months and naturally our reserve fluctuates, theoretically it fluctuates every day but we do not correct it every day. It would be a tremendously burdensome and futile thing

to do; so it is corrected periodically. Now that reserve should all be earned in the passage of time by one of two methods: Either by the policy expiring, or by the happening of a loss to the policies. And it will pass then over to the Profit & Loss account of the company. Now what those losses are going to cost, no man could definitely say. It would depend altogether on the character of the business.

The Referee: Well, does the experience of the companies furnish you with any reasonable certain method of determining what that ratio probably will be in a given line of business?

A. Only to this extent, that a merchant buying the accounts receivable of another merchant, he might pay 80 cents on the dollar for that account, or those accounts, and he might say, "Oh, Lane, I will only give you $80.00." He may say, "I know your credit operations have been 33⅓ per cent better than mine"; that McGinnis' insurance op- [fol. 887] erations may have been better than mine, therefore the expectancy of losses would be less on his account than it would be on mine. That is the only way I can answer it—if that is what you have in mind. If it is not, I hope you will give me further opportunity by questioning.

Mr. Barker: Mr. Lane, covering the 75 year period of life of your company, do you know what its average losses were during those 75 years?

A. Oh, I couldn't tell you that.

Mr. Barker: I don't ask you to but your books would show it?

A. Well, our books would show it.

Mr. Barker: I have it here.

A. Well, you have it in an approximate form.

Mr. Barker: I mean you have it?

A. Yes, it can be produced; as long as records were kept.

Mr. Barker: You have, at the same time, your account of return premiums on cancellations, haven't you?

A. Yes, presumably so.

Mr. Barker: That is all.

Mr. Folonie (resuming direct examination): Mr. Lane, what is meant by the term "incurred losses" as the term "incurred" is used in your business?

A. A policy, let us say that it has been issued for $1,000.00, is involved in a loss. The property which is the subject of insurance under that policy is either damaged [fol. 888] or destroyed by fire. Let us say that it is damaged. The agent who has dealt with the policy will report it to us as being damaged to the extent of $800.00. We will place a debit in our account of $800.00 against that transaction and that is the entire loss. Now, in the course of time, that loss is adjusted. Of course, that is merely an estimate. He goes out and looks at this situation and says, "I believe that loss is an 80 per cent loss." In the course of time an adjuster is sent to the scene of the loss and he and the assured agree as to what that loss is, under the terms of the policy, and it may finally result that a proof of loss and affidavit is provided us, under the terms of the policy, by which we agreed to pay that man $625.00. Now the $800.00 is the incurred and the $625.00 is the paid loss. Now what becomes of the $175.00? In the process of accounting that $175.00 is credited to the incurred losses that are coming in during that period of accountancy—which is ordinarily a month. So that the incurred loss is the best known estimate of what the policy liability of the company may be at any given time for its operations.

By Mr. Folonie:

Q. Now, for a given period of one year, when you reach December 31st of that year, in your incurred loss figure for the year, how exact is that part of your figures where the losses have in fact been paid during the year?

A. Well, the incurred losses and the paid are all balanced figures. In other words, they must balance in the books of any company, or the bookkeeping or accounting of that [fol. 889] company is manifestly faulty. If they do not balance the bookkeeping or accounting of that company would be manifestly faulty.

Mr. Folonie: In other words, when you get to the end of the year, that part of your incurred losses, which have in fact been paid during the year—have they been corrected to actual figures by your process of keeping your incurred figure?

A. Yes. Perhaps it will be explained if I state the ac-

counting formula by which incurred and paid losses are dealt with in an insurance company's books in the ordinary practice of the business. The unpaid losses for any given period of time that are outstanding at that period of time, is the starting point. Take those unpaid losses, and the paid losses during the new period and subtract the unpaid losses for the old period and you must necessarily have the losses that were incurred during the period in between. Add paid and incurred and subtract the previous unpaid and by that way you net the losses that occurred in that period of time.

Q. What about the incurred expenses?

A. We don't carry our expenses on an incurred basis. We only deal with them on a paid basis because we find that the pressure on us to pay our bills is so great that the paid and incurred would be practically identical and almost simultaneous.

Q. In other words, the amount of the unpaid items is so nominal that you don't take it into account?

A. No, as an accounting proposition, it would be in my judgment of no importance. The difference would be a nominal difference only.

[fol. 890] Q. In calculating an underwriting profit or loss, taking as you say the earned premiums on one side and the incurred losses any expenses on the other, why not simply take the amount of money you took in and the amount you paid out and in other words, the received premiums and the losses paid and the expenses paid, and get at it that way, instead of taking the earned and incurred basis?

A. If that method was followed you would have what is known in the business as a trading balance. Let us say that a company has a premium income during the month of September of one million dollars. It has losses of $500,000 and it has expenses of $400,000. That leaves you a trading balance of $100,000. Now, manifestly, if you do not reserve a charge against that remaining $100,000 all the liabilities that arise and accrue out of that million that you transacted in this period of time, you haven't got a true profit because the contingent liabilities have not all been charged to the transaction. If you do not charge the reserve against—the unearned premium fund against that transaction, it is

conceivable that a large percentage of the socalled revenue will have to be paid away by return premium demands.

Q. Might a company at the end of the year by setting up its figures on the basis of premiums received and losses—and expenses paid, having a large amount of losses which had in fact happened but had not yet been paid, might such a company be insolvent and still an apparent profit be shown by such a method of calculation as I have suggested?

A. Yes.

[fol. 891] Q. Are you required by the different states in the Union to set forth the condition of your company upon the underwriting part of your business upon an earned and an incurred basis?

A. Yes.

Q. Is that universal throughout the United States?

A. Yes, sir.

Q. The term has been used by some witnesses in this case of a "convention form of annual statement." What does the term "convention form" imply, or what is the origin of the term?

A. The origin I understand to be as follows: The insurance commissioners or superintendents of the various states of the Union have what is known as a National Convention of insurance commissioners. This, I understand, is a voluntary body to provide a form in which information on insurance practice and insurance regulation is exchanged. Its purpose is to develop the best thought and best practice in the regulation of the business, under the laws of the various states. That committee has had blanks—that convention has had blanks printed and this form of accounting or reporting is the result of a recommendation of that committee and as such it has been substantially adopted by all of the states of the Union; in its general features. It is departed from by some states; chiefly through the fact that many of them require the companies to give a great deal more detail than this so-called convention form originally required.

[fol. 892] Q. And is the form of annual report as made to the State of Missouri for the years 1917 to the present time, is that what is known as the "convention form" of annual statements?

A. It is.

Q. And in general, with the exceptions that you have just noted, is that the same general form that you use in the various states of the Union?

A. It is.

Q. In the conduct of the insurance business, what is the term which in consideration of rates is the basic term used for calculation of premiums?

A. I don't think I understand your question.

Q. Basic term of time on which calculations——

(Interrupting.) The annual term.

Q. In policies—in term policies as distinguished from annual policies, is the basic rate which is applied to the annual business also applied proportionately for the term? In other words five-year policies written upon premiums of five times that of an annual policy or is that a different practice in your business?

A. I take your question runs as to how rates are quoted?

Q. Yes.

A. Rates are always quoted in their relation to time for a period of one year. Policies that are written for longer periods than that, their premiums are determined by building up from the annual term rate. A three year policy is written for 2½ time the annual rate and the five year policy is usually written for 4 times the annual rate.

[fol. 893] Q. In other words the policy for—the term policy is written for a less amount of premium proportionately than the one year policy?

A. It is discounted.

It is the same principle that would be encountered at a bank. A person might negotiate a loan of $5000.00 if he was lucky, at a bank, and he might have that note discounted, or the bank might let him take the $5000.00 and depend on their security and his character to get the interest and principal at the end of the term at which the loan was made. Now term rates applying to policies written for terms of time longer than one year, in the fire insurance business, is a simple adaptation of that discount principle.

Q. What is the underlying reason for giving a policy for five years at a discount or lesser rate of charge than on a one year policy?

A. Manifestly the expense of transacting this business is made up of a great many details, clerical details. A policy that is written for a five year term is executed at no less cost in all of these clerical details than is one that is written for an annual term. Furthermore the company is not put in the competitive position of seeking that business five times instead of one.

Q. Are there any factors, in your opinion, proper for consideration in determining an underwriting profit or loss excepting those of the earned premiums, the losses and expenses incurred during the given term?

A. No.

Q. Does your company have any assets in invested form from which it derives revenue?

A. Yes.

[fol. 894] Q. Does the benefit of the income or the earnings from those invested assets devolve to the company—to the benefit of the stockholders?

A. It does.

Q. In your judgment, should any part of the earnings upon such invested assets be taken into consideration in the determination of the proper underwriting profit or loss?

A. No.

Q. The term has been used in this case a number of times, and I use it as it has been used in the case, of earnings on unearned premiums. Will you state to us your ideas and judgment as to the propriety or impropriety of segregating or undertaking to segregate earnings, if any, on unearned premiums and considering them as a factor in the determination of underwriting profit or loss?

A. Well, in studying that question, it has always appeared to me that a fire insurance company was in the position of selling a definite thing—a right based on the contract made between the company and the policy holder; exercisable in the event of the happening of a stipulated contingency; and for that right it paid a stipulated premium.

Now the company in its legal operations must set up as a liability its unearned premium fund that we have been discussing. Naturally that fund is a book liability. It, in its terms—in its property form it is merged in the capital and surplus of the company. It is inseparable. It is invested, legally invested, under the direction of the officers

and directors of the company. The earnings of that fund which arise through the investment of the fund belong to [fol. 895] the stockholders because they are responsible under the policy contract for maturing that contract.

Certain of the states have provided laws under which insurance companies can optionally operate, known as "Safety Fund Laws," notably the States of New York, Rhode Island, Wisconsin, Minnesota, New York, Massachusetts, New Jersey.

These "Safety Fund Laws" are—the operation is designed to protect whatever equitable rights the general policy holders might have in a company that was either impaired or substantially destroyed by a conflagration as against the rights of those burned policyholders.

Now the operation of that law and theory of those laws, all of them, is that without those laws, manifestly the whole assets of that insurance company would be paid out to the burned policyholders.

Now they provide a method by which the company can appropriate a certain portion of those funds and under the direction of those laws can set up and reconstitute a new capital, a new reserve and go on and fulfill their policy contract obligations to the unburned policyholders.

It seems to me in thinking about this matter that that certainly is a refutation of any idea that the reserve either equitably or legally in any sense whatever belongs to the policyholder, except through the carrying out of the conditions laid down in the policy—the maturing of those conditions.

[fol. 896] Q. This "Safety Fund Law" that you mentioned, the company's entire assets would be responsible in the case of a conflagration to those who were burned by fire, leaving nothing at all for those who had contracts of insurance but who had had no fire?

A. Exactly so. Take the case of a company, a considerable company, like the German Insurance Company of Freeport, Illinois, at the time of the San Francisco fire, that company's assets were used entirely to discharge its obligations to those Frisco people who held their policies. I don't know at this moment what the unearned premium fund of that company was, but certain it is that it was several million dollars. Those millions were not owed alone to those Frisco claimants. They were owed to everybody who

had paid any money to that company under the reserve laws. Nevertheless, they were paid to those claimants out there in San Francisco. That is the distinction that I want to make.

The Referee: In other words, policyholders are divided into two classes, actual and potential creditors of the company?

A. Precisely.

The Referee: The actual being those who have suffered a loss and the potential creditors being those who may suffer a loss.

A. Yes. And those who may claim a return of their premium. I have prepared a statement on that, Mr. Folonie, that would perhaps clear that——

Mr. Folonie (interrupting): Very well.

[fol. 897] Mr. Lane (producing document) (reading):

"Capital of an Insurance Company, not being permitted to create its unearned premium, any deficiency in the reserve account is required to be taken care of by surplus funds which unquestionably belong wholly and without let or hindrance to stockholders. Many insurance companies today have a reserve—an unearned premium reserve which they think belongs in equity more to the stockholders or the corporation than to the public. It seems to me that the argument advanced that such unearned premium fund is accumulated as a result of the company's engagement in the insurance business is entirely empty. Of course premium revenue is derived from the public. Why not? The public in turn receives indemnity and why should it not pay for what it receives; and it having paid for it, why should it have a continuing equitable interest in the price it paid.

"The true purpose of the unearned premium fund is to enforce solvency and how can states like New York, New Jersey, Wisconsin, Rhode Island, Massachusetts, Minnesota, and possibly others, present an argument that they have—the true purpose of the reserve is to enforce solvency, and how can states like New York, New Jersey, Wisconsin, Rhode Island, Massachusetts and others advance an argument that the reserve is for any other purpose when they have on their statute books Safety Fund Laws which re-

fute this theory that anybody except the general creditors of the corporation owns its assets after it has been rendered insolvent by a conflagration.

[fol. 898] "If that it a fact after the conflagration, how can it be other than a fact before the conflagration? The corollary of this fact, if you admit it, is that until insolvency is reached the stockholders of any corporation own it. The share that goes with ownership is balanced on the other end by the responsibilities naturally concomitant."

Q. Does an insurance company employ its capital in its business in the sense that, for instance, a public utility uses its capital in the direct prosecution of its undertakings?

A. No, it would not, because if it did its capital would be permitted to constitute its unearned reserve but as a matter of statutory requirement, the capital must remain unimpaired.

Q. Are you permitted by law, or do you employ your capital directly in your business of insurance at all?

A. No.

Q. You keep it intact and separate entirely from your actual business of underwriting?

A. The capital of any insurance company up to the statutory—up to the minimum required by statute is merely a guarantee fund, that is a prerequisite to the franchise of doing the business.

It does not enter into the business in the same sense at all that the capital of a manufacturing company would enter into it, into the fixtures, plant and machinery and consequently whatever legal status of that capital it can only be used to earn at interest such a return as is possible of the [fol. 899] securities that regulate the capital investments of insurance companies. Those regulations vary somewhat in the different states.

Q. It has been suggested in this case that a proper method for ascertaining or determining the proper earnings of a company in a given territory say the State of Missouri, would be to take the proportion of the capital of the company, such proportion as the business of that particular state bears to the business of the company as a whole, and having taken such allocated part of the capital, ascertain the reasonable profit or return upon that amount of money and so arrive at an amount which would be proper

as a return to the company. Will you state why that is, or is not, a correct method of, in your judgment, for the ascertainment of a proper return upon the conduct of the business of insurance?

A. Well, I think, if I understand the question right, when you say that the capital would be allocated in proportion as the business of the company in Missouri related to its whole business, you mean by the term "business," as the premiums taken in Missouri would relate——

Q. (Interrupting.) Yes, I mean if the premiums in Missouri were say a 1/100th part of the entire premiums of that company, take a 1/100th of their capital and compute a given rate of profit on that and limit the profits to that sum.

A. Well, it can be seen at a glance that that is the roughest sort of a proposal. Who knows that the premium rates at which these premiums have been taken in Missouri are adequate rates? If that method were to be applied at all, [fol. 900] it should be applied to the liability outstanding under the company's operations in the State of Missouri, in proportion to its total outstanding policy liability going out of its whole operation, rather than relating it to the premiums taken.

To illustrate: Let us presume that an insurance company wrote only one policy in the State of Missouri and that that policy was written for a sum, let us say of $150,000 and that the premium taken was $100.00. The premium might be an absurd premium in view of the liability assumed. Why, therefore, predicate an allocation of capital upon a premium when the true relationship would be on the amount of policy liability outstanding.

You finally must come back to that, in logic, that is the premium grows out of the liability.

The capital could not be legally in Missouri, as I understand it—it could not be divided in this way.

The capital of our company being $3,000,000 is answerable, every dollar of it in the discharge of its contract obligations in the State of Missouri. There isn't any less sum answerable.

Q. In other words, if we had a conflagration in the State of Missouri, which we will assume involves the payment of losses in an amount in excess of your capital and surplus,

would there be any part of the capital not responsible for those conflagrations in Missouri?

A. Under the terms of the service of Process Law in the State of Missouri, I would say, no. I think that all of our capital could be responsible for that—for that loss.

[fol. 901] Q. Has the amount of profit or loss derived from the business of underwriting any just relation, in your opinion, to the amount of capital of the particular company?

A. Has the amount of profit and loss gained by a company any relation to its capital—is that your question, sir?

Q. Yes.

A. Why, I think, yes. I think that a company with a capital that inspires the confidence of the public and of the agents through whom this business is largely done, is in naturally a stronger position than an insurance company or an insurance instrumentality that has neither no capital at all—and there are many such in the business—or one who has a small capital.

Q. You say that there are many in the business who have no capital at all?

A. Yes.

Q. What would you mean by that?

A. I mean either mutual corporations or so-called reciprocals.

Q. You have used the term "conflagration" several times. What is a "conflagration" as you use the term, and as it is commonly known in the business?

A. It is commonly known as a sweeping fire that will produce a property damage in excess of a $1,000,000.

Q. In figuring the rates in a particular state, are all of the conflagration losses of a state, for example the Frisco fire—to point my inquiry—are those in the conduct of your business all properly to be charged against the particular state where the particular conflagration occurs, in rate making?

A. The theory of spreading conflagration charges has finally been evolved to a point where it is now deemed the [fol. 902] most—the wisest course, to charge the given state in which the conflagration may occur the whole of the burden up to a $1,000,000 and beyond that it must be spread countrywide.

As to just what the practice has been in the past in that matter I am not capable of answering. I think in the broad effect it has been substantially that because we all know that after the Frisco fire, which was—which occurred only two years after a very destructive and costly conflagration in Baltimore, that insurance rates throughout the whole country were advanced 25 per cent.

Q. If the whole burden of the losses had been placed upon respective policyholders in the State of California instead of Frisco, where it occurred, what would be the consequence as to the practicability of so continuing your business?

A. Well, the whole theory and the whole usefulness of the practice of insurance, whether it be fire insurance or any other form of insurance, would, of course, be refuted unless the losses were spread. That is the sole and only economic need of this business. If a man were going to have to bear his own losses, he might just as well not insure. Insurance companies only spread the losses whether they be mutual or stock companies, or reciprocals, or any other form.

Q. Has the question of the proper amount to be charged, or considered to care for conflagrations, had any considerations at the hands of insurance superintendents and commissioners and company representatives?

A. Yes, it has.

[fol. 903] Q. I wish you would state in a general way over how long a period of time that was under joint consideration between the companies on the one hand and the insurance commissioners on the other.

The Referee: Just a moment. Read the former question, Mr. Blume, please.

(Whereupon both of the last questions were read by the reporter.)

The Referee: Very well.

By Mr. Folonie:

Q. Now you may answer the question.

A. I should say approximately seven or eight years that subject has been agitated and labored upon between the

companies on the one hand and the commissioners on the other. As a matter of fact that statement that I just referred to was a comment that I made relating to that subject in the year 1920.

Q. And was any part of your organization engaged in that specifically on the company's behalf?

A. Yes.

Q. Who was?

A. The vice-president of our company, William L. Steele.

Q. And what amount or percentage was determined by such joint consideration to be a reasonable and proper conflagration charge?

Mr. Barker: Now, we object to that as pure hearsay and as not binding on the State of Missouri and in violation of the Missouri State law, which provides a conflagration hazard as 3 per cent and any agreement made between this gentleman and the insurance commissioners would be pure hearsay.

[fol. 904] Mr. Folonie: I am not familiar with the statute counsel mentions but I purpose to show that 3 per cent was the amount so under consideration, so I think probably I can shorten this particular phase if counsel understands that is the figure.

Mr. Barker: My objection is that it is hearsay.

Mr. Folonie: I think perhaps that is well taken at this time. I will not pursue it just now because I have other witnesses who can answer perhaps better than this one.

The Referee: The question then is withdrawn.

By Mr. Folonie:

Q. What, in your judgment, Mr. Lane, from your knowledge and study of the subject, is a proper and reasonable amount to care for the conflagration hazard that you have mentioned?

A. Something between 3 and 5 per cent.

Q. Upon what?

A. Upon the premium income of the company.

Q. Have you given study and consideration to the question on what is the reasonable underwriting profit upon the earned premium income of the insurance companies engaged in fire insurance business?

A. Yes.

Q. What in your opinion is a reasonable underwriting profit?

Mr. Barker: We object to that because the Missouri statute is not based on underwriting profits but earnings of the company as a whole.

The Referee: Overruled.

Mr. Barker: Exception.

[fol. 905] (To which action and ruling of the court, the defendant by counsel then and there at the time duly excepted and still excepts.)

The Witness: Shall I answer it?

Mr. Folonie: Yes.

A. I think 5 per cent is the approximation that has finally been fixed as a matter of general opinion in the business and not only by people in the business but in discussions between insurance companies and the insurance commissioners.

Mr. Barker: I ask that that be stricken out as pure hearsay. I understood the question to call for this witness's sole judgment and not what other people may think.

Mr. Folonie: We will confess the objection to that part of it which purports to state anything about the insurance superintendents joinder in that conclusion. If you will complete your answer more specifically as to your judgment.

A. Well, in my judgment, 5 cents charge on the $1.00 of the premiums earned is a modest enough reward for the transaction of this business.

Q. In your judgment, would that be a reasonable profit?

A. Eminently so.

Q. If a 5 per cent underwriting profit upon the average, of companies in the business, were derived, would that not be productive of more than 5 per cent by some of the companies?

A. Undoubtedly so.

Q. Does that militate against your judgment—calling that fact to your attention?

A. Not at all. It would be just as unreasonable to say [fol. 906] that it would militate against it as it would to say

that every individual risk, if carried in logic down to that extent, would produce a fixed loss ratio. Manifestly that would be an impossibility and an absurdity.

The Referee: Where the increased profit occurs that is a reward to the increased intelligence in handling this particular line of business?

A. The increased intelligence—It is the reward of better management. To use that phrase in its common acceptance; greater skill.

Mr. Folonie: You may cross examine.

(Whereupon a recess of 10 minutes was taken after which the following proceedings were had:)

Cross-examination by Mr. Barker:

Q. Mr. Lane, your company was originally capitalized in 1850 at about $200,000 and that represented the money which the stockholders put into the organization of your company?

A. Yes.

Q. Your capital now is $3,000,000?

A. Yes.

Q. Can you tell me how much of the $3,000,000 in excess of the $200,000 that your stockholders contributed to that capital?

A. The capital at the organization of the company was as near as I can state $200,000. As long ago as in the early '60s, it was paid in a $1,000,000. Subsequent to that time, following the fluctuations of the business it has been reduced and increased. So far as I know it has all been paid in save a $1,000,000.

Q. That is you think that of the $3,000,000 capital now, your stockholders have paid in $2,000,000?

[fol. 907] A. Since I have been with the company. I can only answer of my personal knowledge since I have been with the company.

Q. What was the capital when you went with the company in '17?

A. $1,000,000.

Q. Now being $3,000,000, how much of the $2,000,000 excess did the stockholders pay?

A. $1,000,000.

Q. The other $1,000,000 I assume came from earnings?
A. The other $1,000,000 came from earnings.
Q. What is the value of your stock now?
A. $145 bid and $120 asked, on $50.00 shares.
Q. About three for one?
A. Well, it is practically 300 per cent on the par value of the shares. They are commonly called half shares.
Q. That is a $50.00 share now is worth $150?
A. Approximately so.
Q. And you have a $3,000,000 surplus?
A. Approximately that.
Q. And that came from the earnings?
A. It did. Over a period of approximately 75 years.
Q. Will you prepare and leave with the stenographer, if it is not too much trouble, a statement of the original capital of your company, the amount paid in by the stockholders of your company, the amount of surplus of your company and the present value of the stock?
A. I will.

Mr. Folonie: I will ask counsel, as I have asked for part of that information at least to be produced by Mr. Steele, [fol. 908] Vice President of this company, whether, if so produced, that will serve the purpose of your inquiry?
Mr. Barker: Yes, if he does.
Mr. Folonie: Very well.

Mr. Barker:

Q. Now you write about $8,000,000 worth of business a year?
A. We transacted last year—if you will permit me to refer to a memorandum I have here—we took premiums last year of $9,068,000, during the period——
Q. (Interrupting.) During the period under inquiry, from '17 to '21 inclusive, your premiums averaged about $8,000,000?
A. I could answer that definitely on reference to our accounts, Mr. Barker.
Q. Well, we have it if you don't have it.
A. I may have that.
Q. Well, we have it; we have your report on it. Now during the war your premiums were necessarily greater than in other periods, you stated?

A. Well, they were greater. I would not say "necessarily." As a matter of fact they were greater.

Q. The war was a stimulus to persons taking insurance or did it result from the value of the property being greater?

A. It resulted from the value of the property being greater. The volume of insurance being offered was greater and consequently we took greater premiums at approximately the same rates that we had taken before. That is a property that was insurable, let us say on a 1,000 bags of merchandise, that was worth at pre-war prices, [fol. 909] $50,000, at war prices may have been worth $100,000; and at the same rate it would have consequently produced twice the premium.

Q. You are familiar with the fact that your company received a 15 per cent increase in January, 1920, in Missouri?

A. I am not personally familiar with that, no.

Q. Now then, you figure the business of your company on incurred losses I believe you say and paid expenses?

A. Yes, that is the common formula.

Q. It is an easy matter to ascertain paid expenses but not so easy to ascertain the paid losses?

A. Yes, equally as easy to ascertain the paid losses.

Q. But it covers a different period. An expense is created on Monday and you know what it is on Tuesday?

A. Yes.

Q. But a loss occurs on Monday and you don't know what you are going to have to pay on Tuesday?

A. That is correct.

Q. So that the proper method, you think as an official, is to figure your paid expenses and incurred losses?

A. That is the customary method of running our accounts.

Q. Now on incurred losses, Mr. Lane, covering the period in question, from '17 to '21 inclusive, on an ascending scale of business it would result in the end in charging the state with a good many losses which were not paid against the credit given the state?

A. I can't answer that without further elaboration on your part.

[fol. 910] Q. Well then, suppose the incurred losses in '17 were $500,000 and suppose in '21 the incurred losses were $1,000,000. Then Missouri would be charged in '21 with a

$1,000,000 worth of incurred losses, for rate making purposes, when you may have only paid $500,000?

A. That is true. That is conceivably true. But those losses having been incurred would necessarily in the course of time have to be discharged.

Q. But as to a 5 year rate making—but as to a 5 year period for rate making purposes on an ascending scale of business, in a slang phrase, the state would get the worst of that method of calculation?

A. Not necessarily.

Q. Even if the scale of business was ascending?

A. Not necessarily.

Q. I see. Now then, on your expenses, I believe, the five year period in question, '17 to '21 inclusive, the losses of your company amounted to a trifle over 40 per cent. Do you remember—I mean the expenses?

A. Approximately so.

Q. So that out of every dollar received by your company over 40 cents was paid for expenses?

A. Yes, paid within the State of Missouri; paid to citizens of the State of Missouri.

Q. As an official of the——

A. I would like to correct that. My answer to your last question. The 40 per cent expense ratio over any period of time, a preponderating amount of that percentage would be paid within the state.

[fol. 911] Mr. Leahy: Within the state in which the business originated?

A. Yes.

By Mr. Barker:

Q. Well, I am speaking of Missouri now.

A. Yes.

Q. Does it impress you that 40 cents out of every $1.00 is reasonably high or low, for the expenses of writing insurance policies?

A. It is higher than we would like it but I think it is reasonable in view of the conditions under which the business is done.

Q. Do you know of any other business in the business world where it costs 40 cents out of every $1.00 secured for expense alone?

A. I think so, yes.

Q. What other?

A. Ordinary mercantile transactions, department store operations conceivably might cost that much.

Q. That is for every $1.00 worth of goods they sell, you think their expense is 40 cents in selling it?

A. In the course of adjusting losses when I was in the field, we used to calculate that a company starting operation, his expense account in determining his profits might easily ten or twelve years ago, at the time I spoke of—might easily run to 30 to 35 per cent, yes. Ten years ago. What they run now I am not personally able to say.

Q. Now take a similar business to yours, for instance the loan companies. Loan companies who are engaged in lending money. Have you had occasion to investigate whether or not it costs them 40 cents out of every $1.00 that they make?

[fol. 912] Mr. Folonie: We object to the assumption of the similarity of business.

Continuing by Mr. Barker:

Q. Whether or not it costs them 40 cents out of every $1.00 where they lend a $1.00?

A. I don't know as to that. I think that your statement that the basis—the principal loaned, that you would cast your percentages against the principal loaned is an unfair assumption. If you were to say 40 per cent of the net interest received went to the cost of that transaction, you might be on a nearer basis. You might be closer to a true analysis.

Q. You know for instance that Life Insurance Companies in New York, operating throughout the United States, loan their money for 5 and 6 per cent, do you not, Mr. Lane?

A. Loan it where?

Q. Throughout the United States?

A. No, sir; I do not know that.

Q. Well, 8 per cent?

A. I think as a matter of common knowledge I should say the Life Companies making farm loans throughout the middle west, let us say Missouri, would approximate a return closer to 7 per cent than to 5.

Q. So for every dollar they loan on a Missouri farm, they get 7 cents back?

A. The gross rate would be that. What they get out of it, I don't know. It depends on the cost of making that loan.

Q. You know the banks loan money at 6, 7, and 8 per cent, do you not?

A. I have heard they did. I always hate to pay that much though, Mr. Barker.

[fol. 913] Q. And you think 40 per cent expense for handling that insurance contract is a reasonable expense?

A. I do.

Q. Now then, the expense of your company consisted among other things of your agent's commission?

A. That is right.

Q. The commissions of agents in Missouri, as you know, varies; St. Louis agents receiving a commission larger than in other parts of the state?

A. Yes. I think they do.

Q. Do you know any reason why the agents in St. Louis should receive more than the agents in St. Louis County——

A. (Interrupting.) I know it to be a fact that they do receive more and I think that fact is not to be explained in any other way except that it is a competitive condition. That a company operating in the city of St. Louis cannot get its business there unless it is willing to pay more, and I think that the condition that makes that a fact is a competitive condition.

Q. Have you considered the agent's commission as reasonable or unreasonable?

A. I don't understand the question.

Q. Have you considered as an official of your company, an agent's commission as reasonable or unreasonable?

A. Where?

Q. Throughout Missouri?

A. Well, I think they are fairly reasonable.

Q. You think they are fairly reasonable. Now then, Mr. Lane, when a policy of insurance is written, it is delivered to your local agent in Missouri to the assured?

A. That is true.

[fol. 914] Q. The premium is collected there?

A. That is true.

Q. Eventually it is forwarded to your company?

A. That is true.

Q. Have you had occasion to investigate the number of policies which I returned where the premium is not collected by your agent for a period of 60 or 90 days, and up to six months?

A. Personally I have had no occasion to investigate that condition of business in the State of Missouri. I know that that condition on the whole—applying to the whole business of our company has consumed a great deal of thought.

Q. That is a subject which the insurance world is considering?

A. That is true.

Q. That is the assured takes out a policy, say in Kansas City. Now, he doesn't pay for that in many instances for from three to six months?

A. I do not speak of that as a matter of personal knowledge, we do not grant credit to the holder of an insurance policy.

Q. But your agent does?

A. Well that is a matter that is within his control entirely.

Q. Now if a man carries his policy three months and has not paid for it and cancels, your company has carried insurance for three months, protected him for three months and received nothing for it?

A. Not at all, sir.

Q. How does he pay for that three months?

A. Who pay?

Q. The assured?

A. I don't know that he does pay.

[fol. 915] Q. Then if he does not pay, you have carried him for three months without anything?

A. Not at all. Not necessarily. The matter of extension of credit, please understand, is not the assured but it is to our agent. If in the course of business we fail to collect that premium then the condition that you are seeking to demonstrate arises.

Q. And that happens very frequently, does it not?

A. It does not with our company.

Q. It does not with your company?

A. It does not. Not to the point that you speak of. You are speaking now of three months period. We require our agents to pay us an earned premium in that situation.

Q. Every thirty days?

A. No, every month.

Q. Well that's thirty days?

A. Yes, but we would not permit our agents to cancel flat, as you say, to cancel without consideration over a period of sixty days, and we invariably investigate as closely as we possibly can the facts concerning each individual case and we enforce payment from our agents. Of course, the purpose of that is that the agent in turn will necessarily be enforced to collect that premium.

Q. Now then, the agent when he writes the insurance, is there an inspection made of property with reference to value?

A. Yes. Although this business is done as most business is done on the assumption that most men are honest. If it was not possible to take that assumption, as a stockholder of my company, I would advocate that we liquidate and go out of the business.

[fol. 916] Q. So that your agent then makes the inspection as to value?

A. You say he does. I didn't say so.

Q. I thought you said he did. Does he or does he not?

A. I can't say that he does, nor can I say that he does not. The assumption is that he confers with the assured as to the existence of the value which is to be the subject of insurance. Please understand we do not insure property. We insure people and individuals. There is quite a distinction and important one.

Q. That is you consider it a moral risk in insurance?

A. Yes, although it does not relate to what I had in mind.

Q. If a man calls up one of your agents and wants insurance on his household goods for $2,500, you know as a matter of course that you issued that policy without having the slightest idea as to the value of those goods, don't you, Mr. Lane?

A. No, I do not. I think the form of your question ex-

aggerates the ordinary practice of the business. You say we haven't the slighest idea of the value. I assume that our agents do have an idea of the value. In other words, I would say this, that if our agent had any idea whatsoever that that value did not exist, he would not issue the policy.

Q. How does he find that out?

A. He finds it out by his knowledge of the subject to be insured or his knowledge of the man in whom vests the title to that property.

Q. By personal inspection, or how?

A. By his general knowledge of the man whom we insure.

[fol. 917] Q. Suppose the man is a stranger to him, will he insure him?

A. He possibly might.

Q. You know he would, don't you?

A. No, I don't. Because our instructions to our agents are to know something about the people we insure.

Q. And the question of over insurance then, you think, does not enter into an insurance inquiry as far as your company is concerned?

A. I think it enters very slightly into an inquiry of this nature as to our company or as to the general practice of the business.

If you are asking me a question as to what relation there is between over-insurance and the fire losses in this country, I would say that that consideration has been greatly exaggerated in the public mind by statements that cannot be substantiated and I come right back to my original assertion, that this business would be impossible to conduct were we not able to take the assumption that most people are honest. Just the same way that a department store operating its business in the City of St. Louis, when it extends credit, it makes the best investigation of the individual it can, but out of ten proffers of business to be done on credit, it probably does eight of them.

The Referee: What is the usual practice of your company, Mr. Lane, with reference to collecting insurance premiums from the agent in cases where the agent has issued a policy for which he has not collected and the policy has run say thirty or sixty days?

A. It has run sixty days—any period of time under sixty days, if he makes a statement to us that he cannot [fol. 918] collect the premium and he convinces us that he has made a reasonable effort to collect that premium then if we accept his statements as facts, we mark off that premium. But each case in my company has been examined on its own merits and we have an inviolable rule that we will not accept cancellations flat older than sixty days. In other words, we force that agent to pay that money himself. If he extends credit he does it on his own responsibility. That is one of his duties that he must finance out of his commissions that he receives from us on the business.

The Referee: Unless the assured is insolvent?

A. Well, that would be a reason, of course, that would be acceptable to us. The point I want to make clear in answering Mr. Barker's question is that in the practice of collecting our premiums, that is a question of individual management. Some managers are wiser in the extending of credit than others. We believe this, that if we cannot get our money, we don't that agent's business and if we have to spend a great deal of money and time and effort in collecting the premiums from that agent, we come to the conclusion that the clientele that that agent has is not a desirable clientele and that we do not want to do that business.

By Mr. Barker:

Q. Now, if your agent collected the premium at the time he wrote the policy, that would all be avoided?

A. It would. That would be a very desirable condition.

Q. Don't you know that there is quite a system throughout Missouri and the United States of carrying insurance for say 60 days and canceling without cause and then [fol. 919] carrying in another company for 60 days and cancelling without cause and then into another one and thus keeping insured all the time without any payment of any premium?

A. I have no doubt, sir, that that is done in isolated cases. In just the same proportion that other dishonest devices are practiced to take advantage of trading conditions in almost any business.

Q. Now, then, let us assume that a man goes to a bank that writes insurance—and that is a very common method in small towns, is it not?

A. It is in certain sections of the country, yes; very often an employe of a bank may represent an insurance company.

Q. In fact that has been recognized so much that some states refuse to grant licenses to banks to write insurance, do they not?

A. I don't know that to be a fact. I don't think they do. Please let's be explicit, please. We don't commission banks or other corporations to exercise the powers of agency that our company grants to people. We commission individuals.

Q. Now then, if A goes to a bank to write insurance through one of its employees and he borrows $1,500.00 on his house, you know as a business man that the title is examined, investigation is made of the property and the value taken into consideration, don't you?

A. Yes.

Q. Now if, at the same time, he wants $1,500.00 worth of insurance that is given as a matter of course, is it not?

A. That information is.

[fol. 920] Q. No, the insurance is given as a matter of course upon the payment of the premium?

A. Well, it might or might not be. It depends on a particular case under consideration. It might be given as a matter of course to one man who enjoyed a good name in the community and it might be given after examination; or it might be mistakenly given without examination to another individual who did not occupy as good a credit position in the community. That would depend on the efficiency and fidelity of the agent.

Q. The bank will receive, we will say, 8 per cent of the money which it lends, which is a fair rate through the middle west, and your company will receive the premium for insurance. Now it costs your company 40 cents out of every dollar which it receives for its expense. It costs the bank less than 2 cents out of every $1.00 which it receives for all the trouble it went to on the loan, doesn't it?

A. I haven't examined that, I can't answer that except on your statement of the matter.

Q. Well, that sounds right, doesn't it?

A. Well, I wouldn't need to dispute it nor affirm it, sir.

Q. If that is true, how do you figure a bank can go to all that trouble for 2 cents, if it costs you 40 cents?

A. Are you casting this percentage about on the sum of the principal alone, or the sum of 7 per cent taken out of the same? Let us say the loan is $1,000.00, then the cost would be $70.00. What would be the loan commissions and all the expenses against that $70.00?

[fol. 921] Q. Well, it wouldn't exceed 8 per cent under the law?

A. 8 per cent of the $1,000 or of the $70?

Mr. Leahy: He is talking about the maximum interest.

The Witness: If you carry these two questions—if you are going to talk about the percentage thrown against the sum of money loaned, then we will talk analogously about the amount of the policy. I don't want to be confused on that point.

By Mr. Barker:

Q. I am not trying to confuse you?

A. Well, I am not at all alarmed that you will confuse me.

Q. If the loan is $1,000 and the policy of insurance is $1,000, now then for that $1,000 worth of insurance that you receive, just as an illustration, $10?

A. Yes.

Q. It costs you $4.00 out of your $10.00 to handle that transaction?

A. That is approximately correct.

Q. Now then if the company receives on the $1,000 at 8 per cent, $80.00; that is the principal which they receive, or the interest which they receive on the principal. Do you know, as a business man, the amount of money it takes for them to handle that transaction, it having cost you $4.00 out of your $10.00? Do you know what is would cost them?

A. I don't know. I think that would vary in different localities of the country.

Q. I see.

A. Answering it in the spirit in which you asked the question: I know as a matter of fact that there are very often a good many considerations entering into the lending of [fol. 922] money, in the way of bonuses and premiums.

Sometimes I have even had to do with transactions where two sets of notes were taken and somebody got one set for 1 per cent of that note, whereas the individual making the loan did not get that at all. That was the commission consideration and went to the agent. Sometimes there are bonuses for getting the loans.

Q. You told Mr. Folonie that the premium which you received for writing insurance may be divided into earned premiums and unearned premiums and you explained very carefully the difference between them. Now then, the premiums which you receive, which you call "unearned," on your books they are marked as a liability by your company because they may have to be returned to the assured?

A. The unearned portion of the premium is, yes.

Q. They are never carried for the purpose of paying losses?

A. They are carried for the purpose of paying losses just the same as all of the other general assets of the company are.

Q. Then you say that unearned premiums which are set aside in a reserve are carried there for two purposes, one, subject to be returned to the policy holder if he cancels. Second, to use for the payment of losses throughout the country, is that right?

A. That is the correct answer to that question. That is correct. The true situation, however, is complicated by one or two other factors. That unearned premium fund conceivably might go to liquidate the loss liabilities of the company along with the capital and the surplus or any other of its assets.

[fol. 923] Q. That is in case of a big conflagration?

A. In case it could not pay—by any other method—unless there intervened some statutory provision under which the company operated such as these safety fund provisions we have talked about this morning.

Q. We haven't those provisions in this matter.

The Referee: Do I understand you to mean that absent a statutory provision forbidding such, the unearned premiums being liable to be taken for the debts of the company, that they are in that sense treated by the company as assets of the company?

A. Yes, you do. Any of the assets would be answerable to any of its creditors.

By Mr. Barker:

Q. How do you explain that these unearned premiums which you count reserve are both a liability and asset of the company?

A. Because the theory of the unearned premium is a subsidiary consideration. The first function of any insurance company is to pay losses arising under its policies; and when an insured takes out a policy, he is presumed to recognize that fact. Now the law steps in, in the State of New York, and governs what may happen, provided there is no conflagration, setting up a regulation that provides what shall be done with those premiums in one event, that a contingency does not arise that will necessitate their disbursement in answer to loss claims. That is, that they shall be there at the command of the policy holder to be received back at pro rata, or short rate as the condition—as the facts may determine, in the event there has been no fire lien on those assets by a policy maturity by loss.

[fol. 924] Q. Now then, have you had occasion to investigate and do you know about what per cent of premiums are returned to policy holders in cases of cancellations?

A. Our—answering that from memory, Mr. Barker, my statement would be about 25 per cent of the gross premiums written by our company would flow back.

Q. Is that just a mere guess, or have you given any thought to the subject at all?

A. It is nothing better than a mere guess. I can give you the actual figures if you will let me consult my books. That is my best memory.

Q. That impresses me from my investigation as being unusually high. One-fourth of your premiums returned in cancellations?

A. Cancellations, yes.

Q. Then, of course, when a loss occurs your entire premium is earned?

A. If it is a total loss, yes.

Q. If it is a partial loss, is the premium figured in the payment of the partial loss?

A. Well that would be a matter of agreement with the claimant at the time the loss was made.

Q. Under your policy one loss terminates your entire liability, doesn't it?

A. No, it does not; certainly not. A man conceivably might have a policy issued him for $100,000 covering several different subjects of insurance at different locations and if one of those items on that policy might be $1,000, we will say, if that was destroyed and we paid him $1,000, it would distinguish our liability as to that particular subject of insurance, the remaining $99,000 would remain in force and would have to earn its premium out in the regular course of time.

[fol. 925] Q. Now, Mr. Lane, you say that you have set up an unearned premium reserve. Do you mean that on the books of your company you have a separate classification which you call an "unearned premium reserve," or is that mingled with all the funds of your company?

A. I mean that in our accounts, there is an entry in our general ledger on the liability side, of a certain sum known as "unearned premium" that is counted a liability.

Q. That is you keep separate, you mean, on your books as a bookkeeping entry your unearned premium reserve?

A. That is correct. We do so because we are required to do so by the laws of the State of New York under which we are incorporated.

Q. Now then, on your conflagration hazard liability, do you set up and keep separate as a bookkeeping entry a conflagration hazard or liability to the amount of 3 to 5 per cent as you stated this morning?

A. I don't recollect that in my testimony I ever said anything about keeping an account in our books of a conflagration hazard. That is a most vague thing. It is a thing that it would not be possible to make a subject of accounting.

Q. What I mean is, do you take out of the premiums received a certain amount, 3 per cent, or otherwise, and set it aside and to itself to be used in case of conflagrations?

A. Why certainly not. We are not talking of a conflagration reserve so far as I can recollect in any of my testimony here this morning in relation to premiums taken. We are talking of that relation in building up of the rate; not in the bookkeeping or the premiums after it is taken.

[fol. 926] Q. Then insurance companies do not have a separate and distinct sum set aside for conflagrations?

A. They do have distinctly in the form of their surplus and capital accounts.

Q. It is in the surplus and capital and not a fund set aside?

A. Some do and others do not. Our company does not. We have a surplus that is liable for any contingent liability of any nature.

Q. We understand. Now then, you told Mr. Folonie that you thought 5 per cent was a proper underwriting profit?

A. I don't recollect I said "proper"; I said reasonable, in my judgment.

Q. Has your company ever since its existence made a 2 per cent underwriting profit?

A. I think it has in some years, yes.

Q. Isn't, in the insurance world, a 1 per cent underwriting profit recognized as an enormous underwriting profit?

A. I wouldn't say it was, no.

Q. And wouldn't 5 per cent in underwriting profit give you such a profit that your stockholders would only have to avail themselves of their income and be independently rich?

Mr. Leahy: Depends on the amount of stock they had.

Mr. Barker: I don't care how much they had.

The Witness: I couldn't answer a question of that sort unless you make it more specific.

Q. Don't you know a 5 per cent underwriting profit would be enormously and outrageously high profit?

A. I don't know that, no.

[fol. 927] Q. Now then, when your company collects these premiums in advance, do you recognize that you are trustees for the policyholders who have paid that money, to keep it and reserve it for them in case they cancel or have losses——

Q. (Interrupting. In the sense that we set up an unearned premium fund against it as a liabilty on our books.

Q. You recognize that you are in the nature of a trustee?

A. No, we do not.

Q. You recognize that insurance companies throughout the United States—fire—are impressed with a public trust?

A. I don't know just what you mean by that.

Q. Are you a lawyer, yourself?

A. I am not; fortunately.

Q. Did you testify, by the way, at the Lockwood Investigating Committee?

A. I did not.

Q. Did you hear any of that testimony?

A. I did not hear it.

Q. Now then, when you receive this money in advance, your company necessarily loans that money or purchases security with it?

A. We either do one of two things with it, we keep it in the bank or invest it, or put it in the current operations of the business. We like to invest all we can of it, naturally.

Q. And you do invest all you think is safe?

A. We—to answer your question by turning it around a bit, if you will permit me to do that, we keep what we deem to be an adequate cash balance to deal with the current re- [fol. 928] quirements of our business, and the remainder of it we invest.

Q. Now your investments in many instances, of your company, are in stocks of private corporations?

A. They are.

Q. Some listed stocks and some unlisted?

A. That is true.

Q. You figure as the president of your company that it is wholly a matter for you and your directors as to how you invest your money, do you?

A. Within and under the requirements of the State of New York, we do, yes.

Q. Have you considered whether or not it was better for your company to invest in real estate securities than stock in private corporations?

A. We do invest in real estate securities.

Q. You know, do you not, as a matter of fact, that the earnings on your investments are invariably greater on real estate securities than they are on private stocks?

A. We know that they are not greater.

Q. Your real estate investments in your company has not been as great as your investments in private stocks?

A. That is right. They have not been as great. The rate of interest return has not been as good.

Q. Since you became president in 1917, have you had a profit or a loss on your investments?

A. I couldn't answer that at the moment. I would have to look at our books to see, sir.

[fol. 929] Q. As a matter of fact, outside of the earnings of interest earned on unearned premiums, your investments have been a loss, have they not?

A. I wouldn't answer that without more explicit information at my command than I have from memory. I would be perfectly glad to bring any information you want on that point.

Q. Yes. Get me your profit and losses on your investments since you became president? Now the unearned premium reserve which you loan, you make money on that, Mr. Lane?

A. Well, the investment returns interest, if that is what you mean.

Q. Yes. Do you take the unearned premiums and invest that in stock of private corporations?

A. We invest all of our funds, whether they arise from unearned premiums, capital transactions or transactions in the surplus account, in strict accordance with the laws of the State of New York where we are incorporated.

Q. Which allows you to invest in unlisted securities?

A. It allows us to invest in a class of securities that are set out in those laws. They must be—they cannot be—investments made under the laws of the State of New York may not be carried as assets except they meet certain requirements. That is to say, that if we made an investment and it did not pay interest or a stock that did not pay interest over a certain period of years, it would be cast out and treated as a loss and could not be carried as an asset.

Q. Your acquaintance with insurance companies and particularly your company shows you that there has been con-
[fol. 930] siderable losses in the investment end of your business, does it not, Mr. Lane?

Mr. Leahy: Now that is very indefinite. Do you mean that they are in excess of losses made by investment of other companies?

Mr. Barker: I say all companies and his company and all of them.

Q. You know that your investment has resulted in enormous losses, do you not?

A. No, I can't say that, Mr. Barker. I know that we are not infallible; that our committee under whose direction investments of this company are made are fallible and human. I know, on the whole, that the investments of our company have been sound. I know that we have—that we do not speculate with our funds in any sense; that we invest strictly on an investment basis with an idea of getting a reasonable return in consideration of the market conditions that exist when the investment is made and that we look first to the security of the investment.

Q. Do you figure your company has a right to invest in speculative securities, if it cares to?

Mr. Folonie: He has answered that by saying it invested only in things provided by law.

Mr. Barker: Read the question.

A. Do you mean that, as a legal right or moral right, or relating to what?

Q. I mean as a right of the officers of your corporation to spend its funds as it sees fit?

A. Why in the light of our responsibilities to our stockholders, we have a perfect right to invest our money, to in- [fol. 931] vest our money in securities that we are permitted to invest in under the laws of the state with prudence and with reasonable caution.

Q. And those securities are what?

A. Those securities are real estate mortgages, bonds—government, state and municipal—and miscellaneous bonds, railroad stock, bank stocks, and miscellaneous stocks.

The Referee: Is there any examination made of the investments—stocks and bonds in which your company invests this money under the authority of the State of New York?

A. Yes, every five years we are required under the law—or the law of New York state provides that all New York fire insurance companies shall be thoroughly examined every five years and that the superintendent of the State of New York comes into our office every five year period and examines all of our operations and checks our securities to see that the investment has been made in conformity with the provisions of the law.

The Referee: What would result with reference to securi-

ties which had not been yielding a return during that period?

A. Well, if at the end of any annual period, we listed as an asset a stock that had not been paying a dividend return in conformity with the law, the superintendent would disallow it as an asset.

By Mr. Barker:

Q. That would not affect your operation at all if you were yet solvent?

A. Well, yes, if it was disallowed as an asset. How could [fol. 932] it be otherwise? Let us presume we had made an investment of $100,000 in a security that was disallowed. Naturally it would reduce our assets by $100,000.

Q. And if you were still solvent, you would go right ahead?

A. Yes, and do business, by just the same token that we encounter a $150,000 fire loss and were still solvent, we go right ahead and do business.

Q. Now then your committee, or Board of Directors, that passes on your loans—your investments—do they deal with each other? I mean by that do they own private corporations and sell their stocks and their bonds to your company?

A. Why, you will have to elaborate that question. As I keep repeating there, the law of the State of New York prohibits that, I think at the moment.

Q. That is, if you yourself, Mr. Lane, had a chemical company that was incorporated for $1,000,000 under the laws of the State of New York——

A. I wish that were so.

Q. So do I—could you sell its securities to your company?

A. As an officer and director of that company, under the laws of New York, I could not sell our company a stock in which I—a piece of real estate in which I had an interest, and by the same theory I could not sell it as a broker. I could not transact that business.

In other words, as I understand the purport of your question it is whether the company or its officers and directors can be in the dual position of seller and buyer simultane- [fol. 933] ously. The answer to that question is no.

Q. Have you been advised that that is the law?

A. We have been advised—we have been questioned by the superintendent of the State of New York in the operation and purchase of some of our real estate loans.

Q. And that is where you get your idea that it is against the law?

A. Oh, no. We get our idea from reading the law.

Q. You don't claim to be a lawyer?

A. No, I am not, but we have counsel.

Q. And he has advised you?

A. Yes, he has advised us as to what the law is.

Q. Then one of your directors cannot sell the securities of a private corporation in which he is interested, in which he has an interest, to your company, is that right?

A. No, I wouldn't say strictly that that was right, because the word "interested" may have a very broad meaning. If you will elaborate just what you mean precisely by that——

Q. Have you been advised, then, that if one of your directors is interested to the extent of owning stock in a private corporation, a major part of the stock, that he is prohibited from selling a part of that stock or the securities to your corporation insurance company?

A. I couldn't answer that.

Q. Well, I thought you didn't—you didn't want to tell me what the law of New York was?

A. No, I have no idea of telling you what the law of New York is.

[fol. 934] The Referee: Mr. Lane, do you know whether or not any of the funds of your company are now invested in stocks or bonds issued by any corporation in which any officer of your company is an office holder or a stock holder?

A. Why, I should—I don't know that as an actual—as a matter of actual personal knowledge, but I can answer your question, sir, in this guise:

Our company owns several thousand shares of the stock of the Southern Pacific Company and I haven't the slightest doubt that some of our directors, officers and stockholders would be interested in the shares of the Southern Pacific Company.

Mr. Leahy:

Q. But you haven't bought it because of that fact?

A. We haven't bought it for any other reason except that we believe that it is good and sound investment.

Mr. Barker:

Q. Don't you know whether, as a matter of fact, whether it is a fact that in 1913, upon the failure of the New York, New Haven & Hartford Railroad, it was found that more than three million dollars' worth of the stock of the railroad was owned by the fire insurance companies of New York and that on the Board of Directors of the New York, New Haven & Hartford Railroad at that time were many presidents and vice-presidents of fire insurance companies?

A. I don't know those facts as you state them. All I can say in further answer to that question is that we have had no New Haven stock.

[fol. 935] Q. Now, then, you told Mr. Folonie that the entire capital of your company and surplus was available for losses in Missouri. Now, you make no deposit in Missouri and you have no property in Missouri?

A. Yes, we have property in Missouri.

Q. What property have you in Missouri?

A. Uncollected agency balances, probably; a considerable sum of money that is owing us on—no real property.

Q. The only assets which you have in Missouri——

A. (Interrupting.) Would be accounts receivable.

Q. Yes, and have not been sent to your office?

A. Yes.

Q. You make no deposit with the Superintendent of Insurance?

A. So far as I know, we do not. We comply with all the laws of the state as to entry and if it would be required we would have a deposit there.

Q. I didn't think you wanted to be understood as saying that your company has three million dollars in Missouri available to the policy holders there if they could get it?

A. I mean just this, that if we have a maturing policy liability of six million dollars by reason of a conflagration that might conceivably occur in the City of St. Louis tonight that those citizens of the State of Missouri can come

here and recover their losses to the extent of our assets, and in that sense we have every dollar of capital and surplus that we have got engaged in business in the State of Missouri.

Q. They could sue in Missouri and get judgment and enforce it over here?

A. Yes, and sue here, probably.

[fol. 936] Q. Since you have been president of the company, in 1917, what dividends have you returned each year—percentage—to the stockholders of your corporation?

Mr. Barker:

Q. Just give me the amount?

A. We have paid varying rates of dividend in that time. Between sixteen per cent and twenty five per cent on our capital. It has varied in that time. I would have to consult our records to give the explicit figures. It is readily and easily obtained.

Q. Well, we have it. From sixteen to twenty five per cent is your idea now that you have returned to your stockholders during that period?

A. Yes, on our capital during that period. That is, on our par value of that capital and not on our market value of that capital.

Mr. Leahy: Don't include the capital that you really have invested in the way of surplus?

A. No, only on the amount of capital stock outstanding.

Mr. Barker:

Q. The stockholders contributed none of the surplus?

A. Oh, yes, they contributed a very substantial part of it.

Q. Well then, let's get to that. You have three million surplus and three million capital?

A. Yes.

Q. You told me your stockholders contributed about two million of the three million capital?

A. Well Mr. Barker——

Q. (Interrupting.) Tell me how much of the three million surplus the stockholders have contributed.

A. That will all be answered in the business. They—the [fol. 937] capital statement that you have asked me to give you. It will show in that statement. I couldn't answer

just what that is. The evolution of that capital at the time of recapitalization after the Frisco fire when our assets were completely wiped out will show that.

Q. But you don't want to tell the commissioner here, do you, that your stockholders have contributed out of their pockets that three million dollar surplus?

A. No, not all of it. That was not the form of your question. You asked me, as I understood you, whether you had contributed any of that surplus.

Q. Well, what have they paid out of their pockets?

A. Since I have been president of the company the stockholders of the Niagara Insurance Company have not paid anything into surplus. Prior to that time they did pay into surplus.

Q. How long have you carried this three million surplus?

A. We have had it varying from two and a half to three million for ten years.

Q. Your theory is some of that surplus was paid by the stockholders?

A. It was paid in by the stockholders.

Q. Now, have you considered, Mr. Lane, the question as to whether or not more insurance would be carried by your company, and other companies, possibly, if the rates were reduced? I mean by that has it been your experience as an insurance man that if you lowered the rate more people would carry insurance, or not?

Mr. Folonie: We object to speculation on that subject as being based on the theory of the statute of the State of Mis-
(fol. 938) souri, which contemplates the determination of profits in the future by the experience of a five year period elapsed.

The Referee: Overruled.

(To which action and ruling of the referee the plaintiffs then and there at the time by their counsel duly excepted and still except.)

Mr. Barker:

Q. Have you considered that at all Mr. Lane?

Mr. Leahy: He has answered the question and said they increased the rates twenty-five per cent.

Mr. Barker: If he will just say yes or no, now, he can answer it.

The Referee: Read the question.

(Question read by the reporter.)

The Witness: Will you please read me the question again?

(Question again read by the reporter.)

A. Now, that depends entirely on the degree of reduction. If the reduction made would bring the rate to such a point that in my judgment there could be no profit made on the business we would not enter into these contracts of insurance. There is—so far as I know, there is no condition anywhere that requires an insurance company to issue its policies to the public and when the point would be reached—and in individual cases there are many such—presenting themselves all the time in our business, where we believe rates to be inadequate we refuse to write that business.

[fol. 939] It is true other companies may have a different judgment than ours as to the adequacy of the rate and might issue a policy, just the same as a grocer might sell sugar for less than cost if it so pleases him to do it in the belief that he could drag sufficient additional trade in other lines say coffee or green vegetables, to make up the loss and still leave him a profit on the aggregate transaction.

Mr. Barker:

Q. But if the merchant at the end of the year was compelled to make a report as to his earnings of that year he would have to include every activity of his business, would he, including vegetables and everything he handled?

A. He would.

Q. So if you at the end of the year were going to figure for your stockholders of your company, you would consider every activity of your company?

A. We do but as a matter of logic if you just kept loading the boat with material that is not self-buoyant and you get more of that material in, finally the boat sinks. When you get to that point as a matter of judgment we would cease to transact the business.

The Referee:

Q. In your judgment, would a reduction of rates now increase the business so that the companies would profit by the reduction?

A. That is in the State of Missouri, we are speaking of?

The Referee: Yes.

A. No.

Mr. Barker:

Q. Now, you are familiar with the decrease of rate on your traction line here and the fact that it increased the [fol. 940] earnings of the company immediately afterwards, are you not?

A. No, I am not.

Q. Haven't you seen that stated in our public press?

A. No. I don't follow the gyrations of the New York traction situation, Mr. Barker.

Q. You claim that your business is divided into two branches, one known as the underwriting business which means the writing of insurance, and the other is known as your investment or banking activities, and those are your two branches, are they?

A. That is correct.

Q. And the one is inseparable from the other, is it not?

A. In one sense that is true. In another sense it is not. I would explain my statment in this way: That at the present moment the Niagara Fire Insurance Company could go into liquidation and it could pay back the three million dollars capital. It would have three million dollars surplus and it could take that money and go into the banking business and not subject that capital and surplus to the hazards of the underwriting business.

Now, in that sense it is separable. In the sense of the unearned premium reserve—in the sense that the unearned premium reserve is a part of the assets of our corporation and is invested as such assets, it is not separable. They are co-related in that sense.

Q. Now, your profits are much greater, of course Mr. Lane, on what you call the banking end of your business than on your underwriting business?

A. I wouldn't say that—I wouldn't say offhand what our profits over a period of a year over the investment side of

[fol. 941] the business was without examination of our records. I would answer the question only to a degree by saying that our net income from investments is more regularly realized than any underwriting profit we realize because it arises in a regular way of interest; arising out of interest. That is, it is a more dependable source of income to us than our underwriting profit, whatever that profit may be.

Q. Then if you told Mr. Folonie that five per cent underwriting profit was a reasonable profit, and you have paid your stockholders from sixteen to twenty-five per cent with —then you did not pay them out of the underwriting profit, did you?

A. Partly out of the underwriting profit, yes.

Q. At least three-fourths out of the banking profit and one-fourth out of the underwriting profit, is that right?

A. Well, as a matter of fact, our—perhaps this will answer that question (producing document). Only partially will it answer it. Our underwriting profit over the period 1918 to 1922 has been .54 of our net premiums. On an earned premium basis. It has been a half a point.

Q. Since you have been president of your company you have never earned as high as three per cent underwriting profit, have you?

A. Yes, I think we have.

Q. Well, how high have you earned?

A. I couldn't answer that at the moment.

Q. Have you ever reached as high as five per cent?

A. Yes, I think one year we earned five per cent.

Q. Have you ever gone higher than five per cent?

A. Not within my recollection.

[fol. 942] Q. But you have returned from sixteen to twenty-five per cent to your stockholders. Where did you get the balance?

A. If you will be patient with me a moment I think I can answer that last question a little more specifically.

Mr. Barker: Read the question, then.

A. I can't give a better answer to that, but I would like, if I may be permitted, to answer that definitely by a statement taken from our books as to the gross percentage of underwriting profit that we have earned in this period under

discussion. I would rather not get from my memory on it unless it is necessary. Now repeat this other question, please?

The Referee: If agreeable to counsel, Mr. Lane you might prepare such a statement and hand it to your attorney to be filed as a part of your testimony, on your case.

A. I would be glad to do that.

Mr. Barker:

Q. Did you want the last question read to you?

A. If you please.

(Question referred to read by the reporter.)

A. The balance came from our investment income and from our surplus.

Q. Mr. Folonie evidently misunderstood two or three questions which I asked you as indicated by his remarks to the commissioner that you lost money on all of your investments. You understood me to say, did you not, that your unearned premiums resulted in the way in which you handled them in returning a substantial income to your [fol. 943] company, and that your investments in stocks and bonds resulted in a loss to your company? You understand the distinction I make, do you not, between the handling of your unearned premiums and the investment of your surplus?

A. No, I don't think I understand what you are driving at in that whole question.

Q. I see. Now then, your surplus is invested?

A. Yes.

Q. And that is invested in securities such as stocks and so forth along with real estate and other things?

A. All of our assets outside of our capital investment, as required by the laws of New York, are invested, irrespective of where it arises, whether it arises out of surplus, out of capital account or unearned premium account. There is no distinction made whatever in the investments or in their treatment.

Q. That is, your unearned premiums are invested exactly like your surplus?

A. The answer is, in a word that the unearned premium fund is a book figure. It is a book figure, a liability figure.

It is indistinguishable when you get down to our security business. There is none of these earmarks. "This is capital reserve," and so forth. They are undistinguishable except in book accounts.

Q. Do you know anything about how property is insured by your company by brokers? I mean by that chain stores, depots, filling stations, and the like? Do you know how that is handled, Mr. Lane?

A. Why, a broker doesn't insure any of our property, Mr. Barker—strictly.

[fol. 944] Q. I know that.

A. (Continuing.) A broker works for the policy holder. He doesn't work for the company.

Q. I understand he doesn't write the policies. Now then, in Missouri anything like a line of stations, like the Santa Fe, the Missouri Pacific——

A. (Interrupting.) We don't insure those and I can't answer that.

Q. Do you insure filling stations or chain stores?

A. We might insure one.

Q. I mean a line of them?

A. I know of no particular line of filling stations my company insures.

Q. The Kresge stores or the Woolworth stores?

A. I couldn't answer, out of all the dozens of transactions, whether we are interested in that line of transaction—in the line of insurance of the Woolworth or Kresge stores. My belief is that we are not.

Q. Your company, as I understand you, is a corporation today with a capital stock of $3,000,000?

A. Three million.

Q. I mean three million.

A. That is right.

Q. And you have no property in Missouri except what you call your current accounts?

A. That is right.

Q. Now, as a business man, Mr. Lane, assume that a corporation with a capital stock of three million dollars, like yours, at the end of the year, after the payment of all expenses, losses and charges of all kinds, has left $300,000, you would figure that the corporation had earned then in that event $300,000, would you not?

A. No.

Q. You would not?

A. No. I answered your question as to whether we had any property in Missouri aside from accounts receivable and I said we did not. I meant of course tangible property. [fol. 945] We have good will in Missouri in the case of agency balances that has cost us large sums of money to build up.

Q. I understand that.

A. Well, I wanted to elaborate that part of it.

Q. I was confining myself more particularly in that regard to property such as real estate and matters of that kind. I know, of course, you have agency plants out there.

A. That have cost us a great deal of money and that as a going concern we could sell for a considerable sum of money—the plants.

Q. Getting back to my question of your three million dollar company. Now, the expenses of your overhead, overhead expenses of your business throughout the United States, your company distributes those expenses to the states in proportion to the volume of business which the states produce, I believe?

A. Overhead?

Q. Yes.

A. That is the indivisible—that part of our total expense account that cannot be specifically allocated—is that what you are speaking of now?

Q. No. Take your own salary, the State of Missouri pays its proportionate part of your salary?

A. Yest, that is true.

Q. How is that arrived at—what Missouri shall pay on your salary?

A. Well, that is answered, I think, by the method of accounting that is imposed on us by the State of Missouri itself and by every state in which we operate it. The accounting that we are required to make at the end of each year is readily accessible in the last detail to this body, and [fol. 946] it breaks itself up into twelve or fourteen items and we have to show salaries, special agents' salaries, special agent expense, furniture and fixtures, and all the rest of those items, on this sheet that I have here. Those indivisible expenses are not on our books treated in the method that you are suggesting.

Q. Now, you allocate to Missouri a certain proportion of th expenses of your company occurring outside of Missouri. The direct expenses in Missouri are paid directly by Missouri, is that right?

A. No, not precisely right.

Mr. Folonie: May I make a suggestion that I trust may be helpful? I think he is trying to say that they divide these on the annual statement report but do not divide that way on their books.

A. We keep our books on the basis that the convention blank requires that we keep them on, otherwise we could not balance. That would put in a position of keeping two sets of books—which we do not do.

Mr. Barker:

Q. Perhaps you don't understand my question.

A. I am anxious to.

Q. There is a direct expense in Missouri, is there?

A. Yes; like commissions paid. That would be charged directly to Missouri.

Q. Then there is an allocated expense to Missouri is there?

A. No.

Q. Missouri pays no part, then, of the operation of your company outside of Missouri? You don't mean that?

A. I mean so far as our books are kept just that.

[fol. 947] Q. I really am not so concerned about your books as I am about the facts. Take your home office expenses.

A. Yes.

Q. Is a certain part of that chargeable to the State of Missouri?

A. Yes.

Q. That, then, is allocated—perhaps I used the wrong word—to Missouri?

A. Yes.

Q. Now, then, you allocate to Missouri a certain portion of your expenses occurring throughout the United States?

A. Yes. That is, our general expenses that are incurred in the corporate conduct of the business.

Q. Yes, and that is allocated on the basis of a proportionate part of the business which Missouri furnishes as against the business of the United States?

A. That is right; of the gross amount of business done; not the net amount.

Q. Yes. If Missouri furnishes ten per cent of the gross amount of business of the United States, Missouri is chargeable with ten per cent of your expenses?

A. Yes.

Q. And operations throughout the United States.

A. Yes, that is the common method.

Q. In addition to the direct charges which it pays itself?

A. That is correct.

Q. All right. Now, then, the expenses which are allocated to Missouri include the handling, among other things, the handling of your investments?

A. No, because there is an investment charge in the statements that is a fixed arbitrary charge; one-eighth of one per cent fixed.

[fol. 948] Q. Who fixes it?

A. The commissioners. The Superintendent of Insurance of Missouri and New York and Massachusetts and Ohio and Timbuctoo and all the rest of them.

Q. And the charges are one-half of one per cent?

A. No, one-eighth of one per cent. Estimated to be an investment expense.

Q. Then that gets back to the question which I asked you—that of all of your activities including your investments, banking end of your business and all, that is all allocated to Missouri?

A. No, it is not all allocated.

Q. Well, what is not allocated?

A. That investment expense would not go into the underwriting exhibit at all in Missouri. It would go against the banking side of the business.

Q. I am not referring to any of your exhibits in Missouri. You stated that all of your expenses throughout the United States, a proportionate part of those expenses were allocated to the State of Missouri, is that right?

A. Yes, directors' fees, expenses, salaries of officials, that are general in their nature, that are corporate officials.

Q. If you have a young lady in your office as a stenographer to write a letter with reference to an investment, that is allocated to Missouri?

A. No.

Q. That is not. You keep that separate?

A. No, that would be in this one-eighth of one per cent that is charged arbitrarily.

[fol. 949] Q. Now, then, if you use stamps in handling your investment, Missouri pays her proportionate part of the stamps?

A. Not in the sense that I understand you to be inquiring, Mr. Barker. I don't know that I make myself clear or that I understand your question. If you will tell me what you are leading to, I will do my best to honestly bring out the information you are asking.

Q. Yes. I will get it in time. Now, you have here in New York, for instance, a home office.

A. Yes.

Q. Now, in your report to Missouri you charge your home office expenses to Missouri?

A. Yes.

Q. As you just stated.

A. Well, we make a statement to the commissioner, Mr. Barker, that shows our whole business. We don't make—the primary purpose of the statement is to show our condition as to solvency. Now, that statement has on the disbursement side a charge of one-eighth of one per cent; to cover investment expenses. Now, that is on the disbursement side. That is a statement that embraces all the variations of all the operations of the company. It would embrace the nine million dollars of income we had last year, and on the other side would be the disbursements for losses and all the other split-ups—the——

The Referee (interrupting): Do you mean to say that one-eighth of one per cent of the total amount of the expenses of the investment feature of the company's business is charged to the State of Missouri?

A. No. I mean that in the whole statement, Mr. Commissioner, of the company's operations that an arbitrary charge of one-eighth of one per cent is estimated to be a proper charge to cover investment expenses.

[fol. 950] The Referee: Q. That one-eighth of one per cent covers the entire investment expense?

A. That one-eighth of one per cent covers the entire investment expenses.

The Referee: Q. That is one-eighth of one per cent of what? What is the basis?

A. It is one-eighth of one per cent of the sums invested and dealt with. The statement will show that. It is more competent as an explanation of it than my answer. If we had the statement here I could make myself clear.

The Referee: Q. And that is without regard to where the investment is actually made?

A. Oh, yes.

The Referee: Q. And without regard to where the investment is handled—I mean the clerical end of it or any other feature of it?

A. Exactly so. The operations of our company, to answer or illustrate by a case—let us presume that we were buying some of these Dominion of Canada bonds coming out and that we bought them through our Canadian manager. The transaction would be completed up here, but the charge would go on our books down here. It wouldn't go in his books at all.

The Referee: To pursue that line of thought, one-eighth of one per cent calculated on the basis you have suggested is allotted for the purpose of defraying investment expense?

A. That is right.

Q. Now, then, a part of that one-eighth of one per cent is allocated to the various states, or not?

A. Well, I can't answer that. I don't know how that is [fol. 951] dealt with, as a matter of fact. My judgment is that it does not enter into an exhibit—an underwriting exhibit applied to any state. It would go as a direct charge against the investment income of the company.

Mr. Barker (resuming cross-examination): Now, Mr. Lane, I will start back again. You take the entire expense of your company in every activity throughout the United States and you arrive at the expenses of your company for the United States?

A. Yes.

Q. After having arrived at the expenses of your company throughout the entire United States in all of its activities you apportion that expense to the different states in proportion to the volume of business which they produce?

A. Well, if we are seeking to find out just precisely what results our business brought us in the State of Missouri or in the State of New York, we would do that thing as a matter of actual fact, in the company that I am presiding over, our books do not show that. We don't make that allocation.

Q. Very well. Getting back again, your salary and the directors' salaries, the officials' salaries, are included in your home office expenses?

A. That is right.

Q. That is allocated to Missouri?

A. When we come to make the underwriting exhibit in Missouri, it is allocated.

Q. Part of the time of these officers is devoted to investments?

A. Yes.

Q. Therefore Missouri does pay——

A. (Interrupting). In that sense, yes.

[fol. 952] Q. Now, then, on figuring your profit and loss, Mr. Lane, you figure on the volume of business done, do you, rather than on the returns to your stockholders?

A. In figuring—state that question again, please.

Q. In figuring your profits or losses you figure it on the volume of business done throughout the United States, do you?

A. In the underwriting account we figure it on earned premiums. Earned premiums, incurred losses, and paid expenses.

Q. Now, your corporation, I assume, would figure just like any other corporation—what I mean is if at the end of the year you wanted to figure out your profit or your loss—you have a three million dollar company—if you have a million dollars left after the payment of everything that represents your profit that year, does it?

A. No.

Q. What does it represent?

A. It represents the balance after whatever you set out, whatever charges you set up in this account. I cannot answer that in a categorical way, be more explicit. If you will permit me, I will volunteer this answer to it, General Barker: That the general custom of keeping track of our business, a statement is laid on my table at the end of every

month, shows premium revenue, losses incurred, expenses paid, balance. Then we must consider any fluctuation in the unearned premium fund. That is, if it is an increase it has got to be charged against your resultant balance.

Then we must further consider any changes in the status of our investments or any bad debts that we have marked [fol. 953] off, and then we finally go down to the actual realized profit of the whole operation in all departments for the period of time under discussion.

Q. Now, then, let's get down a little closer, then. Suppose that you and I have a manufacturing corporation with a capital stock of ten thousand dollars. Suppose at the end of the first year after the payment of all charges of all kinds including everything that we have left ten thousand dollars. The corporation has earned one hundred per cent that year, has it not, Mr. Lane?

A. Yes, if you have brought into view all charges and all contingent liabilities.

Q. Everything; one hundred per cent?

A. Yes, that is true.

Q. One hundred per cent?

A. Yes.

Q. All right. Now, that applies to your company with a capital of three million. If at the end of the year after the payment of everything, contingent and otherwise, there remains three million dollars your company has earned one hundred per cent?

A. That is true. If we have provided for all contingent liabilities.

Q. That is the only way to figure the earnings of a corporation, is it not?

A. That is the only correct way.

Q. Yes, sir. Now, then, Mr. Lane, if you allocate the expenses to Missouri of handling your investments as you have told me you did, don't you think Missouri should be entitled to consider the earnings from those investments, as a rate making body?

A. If there was any substantial charge made to Missouri [fol. 954] allocation there might be color to that, but there is no substantial charge, because the one-eighth of one per cent of investment amounts to practically nothing. As I say, you must get back to the actual facts as shown by the statement. If you will permit me I will be glad to introduce

myself, or to have brought here, the statement showing just how that charge is made.

Q. That is the report you filed with Missouri?

A. That is the report we filed with Missouri.

Q. Yes. We have that and it has been offered in evidence.

A. In my testimony I said that whatever time I devoted to investment in the sense that we allocated my salary to Missouri or any other State, that Missouri would be charged with it. The time I devote to investment amounts practically to nothing.

Q. Now, Mr. Lane, you agree with me, then, that if the insurance companies allocate the expense of handling these investments to Missouri, that the earnings on investments in Missouri should be considered by the rate making body in making a rate, do you?

A. No.

Q. I thought you said if that were done that way?

A. No, there is an assumption then added to your question. It may not be proper to allocate in the underwriting account to Missouri any investment charge, and I have never testified that there was so allocated a charge.

Q. It is not in your underwriting report?

A. Rates are made on the underwriting result and not on the investment result, so consequently you are talking about two things.

[fol. 955] Q. But let us get to the general problem, forgetting all the reports, the three filed in Missouri and every place else. As an economic problem, as president of a great life insurance company, I am asking you now if the expenses for handling the expenses of, investment expenses of insurance companies, is charged to the state in an allocated way, whether or not a rate making body in that state should not be entitled to consider the earnings from those investments?

A. Now, in the first place, I am not president of a life company. Of course, that was a slip of your tongue. If rates in any area, be it Missouri or New York, are predicated on the investment and the underwriting income and losses both, underwriting income, underwriting losses, investment income and investment losses, then, as I understand your question, I could agree with you; but as a matter of fact and of common knowledge and of practice, ever

since this business has been transacted rates have not been made on that basis and have never been so made in the State of Missouri. They have always been made only with the underwriting results in view, not the investment results.

By the same line of reasoning, the investment loss would necessarily have to be carried into the account as well as investment profits. There are two sides to the investment account, just the same as there are two sides to the underwriting account.

As I stated in my testimony, the people who invest the money of our company are not infallible. We make investment losses, heavy at times, necessarily, maybe, unavoidably so made. Now, the fact is that the rates have [fol. 956] never been predicated on that basis, and if there is in any part of my testimony any statement that leads to the conclusion that I believe that any investment expenses have ever been carried into any underwriting account that bears on rates in Missouri, then I want to correct it.

Q. Very well. Then let us get back again. You file with your underwriting report in Missouri—confining you to that, now—the expenses of your home office. That is in your underwriting report, is it not?

A. The underwriting expenses are. The expenses—the whole underwriting account that is filed in Missouri is filed as under the direction of the State of Missouri and I am not offering myself as a memorandum of the best evidence of how that account is made up or why it has been so prescribed. That can be developed by consulting the account itself, and through Vice-president Steele, who is in charge of the accounts in our company.

Q. And in the underwriting report which you file in Missouri there is one item of "Home office expenses" with which you are familiar?

A. There is a—there are embraced in that account all underwriting expenses and no other expenses except those that arise out of underwriting. There are no expenses in that account, as I understand the composition of the account, that arise out of anything else except underwriting.

Q. Do you remember the item I refer to of home office expenses, in your underwriting account?

A. It must be home office expenses in that account in some [fol. 957] way. I don't remember it in your Missouri ac-

count, no, I don't. If you want me to testify as to the Missouri account let us get the account and refer to it, if I may make the suggestion.

Q. Well, you may get it any time if you wish to. Do you want to get it now?

A. If we are going to pursue this line of questioning we will have to have it before I can answer the questions intelligently.

Mr. Folonie: I think Mr. Steele can answer that better.

The Witness: Yes, he is in immediate charge of it. I am not.

Mr. Folonie: We will produce him as a witness.

Mr. Barker:

Q. Let me understand you, then, Mr. Lane. Do you or do you not charge to Missouri its proportionate share of the expenses of your banking and investment activities?

A. Not in the underwriting exhibit, no.

Q. Do you in any exhibit?

A. No, not so far as I know—any particular exhibit made peculiarly for Missouri, no. It is the general account of the company that shows that investment charge of one-eighth of one per cent.

Q. That is, your salary, the proportionate—is your salary apportioned to Missouri?

A. In the underwriting exhibit?

Q. I don't care what exhibit.

A. We do not apportion my salary to Missouri in any account we keep, no.

[fol. 958] Q. That is, Missouri pays none of your salary?

A. Missouri does pay some of our salary, inevitably so, because we do business there.

Q. Now, then, Missouri is charged, then, along with the other states in the payment of your salary?

A. Yes.

Q. As an allocated expense?

A. Yes.

Q. And you tell me that part of your time, very little I understand, is taken up with investments?

A. That is true.

Q. Now, as a matter of fact, somebody handles the investments of your company. Who is that?

A. Our finance and executive committee.
Q. Your finance and executive committee?
A. Yes.
Q. Are they paid a salary?
A. They are paid a fee.
Q. Paid fees?
A. Yes.
Q. Is that expense allocated to Missouri?
A. I couldn't answer that.
Q. You know it is, don't you?
A. I don't say no. Not of my personal knowledge, no.
Q. Don't you know that all the expenses of your company, including all of its activities throughout the United States, is allocated to the states in proportion to the volume of business they produce?
A. All of it save this item of investment expense, which I cannot answer, as I told you. If you had asked me as to whether my salary was chargeable to Missouri in a certain [fol. 959] ratio as to the time devoted to other matters save investment expenses I would say that it was, yes, properly chargeable, a certain proportion.
Q. But that if you devoted a day a week on investment matters, that is eliminated and Missouri, is not charged with that?
A. In any underwriting exhibit made to Missouri, it is not charged with it, no, because it is not an underwriting expense.
Q. Will you have your office produce your home office expense account showing the proportion which is charged to the State of Missouri?
A. Yes, gladly—of this investment expense?
Q. All expenses.
A. Yes, we will produce the underwriting exhibit that is filed with the State of Missouri.
Q. That won't help me.
A. Well, that is all I can produce, unless you will explicity designate what you want.
Q. Is there any way you can find out in your offices here in New York whether or not the salaries of your home office force, including your own, are charged to the State of Missouri in proportion to the business which it produces?
A. Yes, that can be determined.

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Q. That is true, is it not?
A. That they are so charged?
Q. Yes.
A. Not in any statement that I know that is filed.

The Referee: Without respect to any statement ——
[fol. 960] A. (Interrupting.) You see, we are talking at cross purposes, for this reason: That the investment—the underwriting exhibit that is filed with this statement is a general underwriting exhibit. There is a classification statement filed with Missouri of this—no, the underwriting exhibit that is filed would not pertain solely to the business of Missouri, but would pertain to the underwriting results of the whole business of the company. It is a general sheet in the convention blank.

The Referee: Pardon me. Do you know in point of fact without regard to any report made or any exhibit filed, no matter when made, by whom or where filed, the general expense of your home office is paid in whole or in part by the State of Missouri?

A. Yes. It is paid in part by the State of Missouri, because we transact business there and if we were—I will answer it in this way, Mr. Commissioner: that if I were to send to my accounting department and say I wanted to find out whether we made or lost money in Missouri last year, in making up that statement for me there would be allocated as a charge in that statement against the earned premium revenue in the State of Missouri a proportion of the indivisible expenses of the company by way of my salary and its general expenses, rent and maintenance of our office that would go as a charge against that exhibit.

The Referee: Now, then, in making up that statement would there be any separation of the home expenses and expenses incurred in the underwriting in Missouri or would that statement include all of the general expenses of the [fol. 961] company, whether incurred in underwriting or in the investment end of your business?

A. Well, as a matter of actual fact there would be no division prior to applying any fraction that we set up of my salary or of the rent as it applies between investment activities and the other, because the investment expenses are so infinitesimal that there is no substance to it at all. I would

say that our investment expense from this arbitrary figure we make—as a matter of memory—would run ten or twelve thousand dollars a year on a body of assets of sixteen to seventeen millions.

The Referee: Now, one other question. I have been confused, I think, Mr. Lane, with reference to the base used in the calculation of percentages at times. Now, are you able to state what per cent of the dividends paid to your stockholders has been paid out of profits arising from the insurance business as distinguished from the investment feature of your company's business?

A. No, I cannot state that. As a matter of actual practice in the declaration of a dividend a corporation such as ours with a surplus beyond the liabilities, or a sum equal substantially to its capital, we might declare a dividend at the end of a quarter or at the end of a half a year when during that half year we had not earned it, during the rest of the half year. It would be declared out of accumulated profits accumulated during that time. And so far as I am aware certainly it is true in respect to my own company. There would be no distinction made in considering a dividend as to whether the profits arose out of one [fol. 962] side of the business or out of the other side. As a matter of fact, it is very seldom that both departments of the business ever operate to a profit at the same time. Take in the period of the war when we were in this unusual investment stress and general business stress, the investment side of the business showed heavy losses while the underwriting side of it showed satisfactory profits.

The Referee: While you are speaking, would you say the profits arising from the investment feature—and when I say profits I mean profits which heretofore have been paid out in dividends——

A. (Interrupting.) Yes.

The Referee (continuing): —profits arising from the investment feature are larger or smaller than the profits arising out of the underwriting feature?

A. I would say they are larger.

Mr. Barker:

Q. And in declaring your dividends you just take them from both sources without any division?

A. Well, we take profits accruing from either department of the business and they are carried to a profit and loss or surplus account and out of that account is paid the dividend.

Q. And you do not pay a certain per cent from your underwriting experience and a certain per cent from your investment experience, but all up together and paid to the stockholders?

A. That is correct.

Q. It is indivisible?

A. Yes.

Q. Your company just has one activity?

A. That is correct.

[fol. 963] Q. Now, then, Mr. Lane, with reference to your capital of three million dollars, if you distribute to Missouri her proportionate part of the expense of your company, then don't you think it fair that you ought to allocate the same proportion of your capital to Missouri, to figure your profit and loss in the State of Missouri?

A. No, because our capital is all answerable. It is indivisible and all answerable to either matured or contingent liabilities arising within the State of Missouri or any other state. It is indivisible in that sense.

Q. Now then, your whole capital, being available as you say to pay losses in Missouri, you figure then that it would not be fair to allocate to Missouri, the proportionate part of your capital that the business of Missouri compares to the United States solely because, as you say, your whole capital is available for losses in Missouri. Is that your only reason?

A. No, that is not. That is only the step toward it. Because if you pursue that theory a sufficient length in logic the State of Missouri, if that sort of contention were set up, would set up a barrier to bringing capital into the state to answer the contingent liabilities growing out of these contracts the fire insurance companies make.

It is inescapable that if you say the business in Missouri, is one million that you—of course, this is an absurdity but I simply illustrate it to emphasize my point—suppose we are doing ten million of business and of that ten million that there is one million that arises in Missouri. Now, in

following that theory you would say one-tenth of our capital [fol. 964] then is engaged in Missouri, while as a matter of fact you would deny the policy holders of my company, if you carried that out to its logical conclusion, the protection of the other nine-tenths of our capital, which would defeat the purposes that the corporation was brought into being for. You would keep capital out of Missouri.

Q. Now, then, let us take one hundred thousand dollars company, illustrated just the same. If the State of Missouri produced ten per cent of the entire business of the United States for your company, then Missouri would naturally be charged with ten per cent of all the expenses of the company throughout the United States?

A. All the underwriting expenses, yes.

Q. Well, would you separate the underwriting from the investment?

A. Well, speaking of this whole matter in relation to rates, it must be kept within the scope of underwriting expense and underwriting income.

Q. Well, then, let's see. Got a hundred thousand dollar company. Missouri produces ten per cent of the entire business of the United States. Now, you would charge Missouri with ten per cent of the entire expense of your company, wouldn't you?

A. Ten per cent of the entire underwriting expense, yes.

Q. And you would separate the investment expense from the underwriting expense?

A. Yes, the investment expense would not get into that account.

Q. But your company doesn't keep its books that way?

A. Yes, we do.

Q. You keep your underwriting expense separate?

A. Yes.

[fol. 965] Q. And don't charge them to Missouri?

A. We keep our underwriting expense, all those that are particularly in the way of commissions, inspection service and legal board, taxes, licenses and fees and loss expenses, postage, exchange, traveling expense, stationery and special agents' salaries and expenses, those are all peculiarly applicable to the territory in which the business arises, within state lines; and in that sense the underwriting expense—it leaves home office, general salaries and rent and tele-

phone, general home office expenses that are indivisible, they properly should be allocated, for they are underwriting expense, in this underwriting account.

Q. Now, then, let's get back again to your $100,000 company. Produce—Missouri produces ten per cent of the business of the United States. Now, unless there is a separation of the investment expense from the underwriting expense Missouri would pay one-tenth of the total expenses of the United States, would it?

A. Well, one-tenth of the underwriting expense would presumably be incurred there and be paid there, yes.

Q. That is the method on which you figure?

A. Yes.

Q. Yes. Now, then, if that year you took in fifty thousand dollars of premiums in Missouri, and after the payment of your losses and expenses both direct and allocated you had ten thousand dollars left, you would have a profit in Missouri of ten thousand dollars, would you?

A. You would have a trading balance in Missouri of ten thousand dollars.

[fol. 966] You would not have an underwriting profit of ten thousand dollars, because we have given no consideration to the unearned premium liability.

Q. Would you not have a ten thousand dollar profit on the business which you did in Missouri?

A. You would not. You would not have a ten thousand dollar underwriting profit. You would have a ten thousand dollar balance after paying losses and expenses.

Q. And what do you call that ten thousand dollars?

A. That is a trading balance. It is a balance.

Q. That is a new term in this hearing and I am not familiar with it. Now, what is a trading balance?

A. The balance of revenue that is left after you have paid losses that occurred within the accounting period, expenses paid within that accounting period; giving no consideration to the unearned premium reserve at all.

Q. I see.

A. You must determine that in order to get your underwriting profit.

Q. Now, then, if you did fifty thousand dollars worth of business in Missouri—received that much in premiums, and you paid out forty thousand in all forms of expenses and

charges, you would at least have ten thousand dollars left, wouldn't you?

A. Exactly; to mature the business.

Q. All right, you would have ten thousand dollars left. Now, then, if you would allocate that part of your capital to Missouri, ten per cent of $100,000, $10,000, there would be an earning in Missouri of one hundred per cent, would there not?

A. Why, if your mathematics are correct that percentage [fol. 967] would be right, but I don't see that it bears on an underwriting statement at all.

Q. Now, if you had occasion to read the Missouri statute, this new rating act we are talking about——

A. I read a summary of it; I haven't read the whole act.

Q. Do you distinguish as an insurance official between earnings and profits of your company?

A. You will have to elaborate that.

Q. Is there a difference in your judgment as an insurance official between earnings of a company and profits of a company?

A. Conceivably there might be, General Barker, in this aspect: that in modern accountancy in making statements of operations it is an intelligent thing to know what your operations are on the gross side of the business before certain inescapable charges are made.

To illustrate, the real estate operations of this company are always reported both before and after taxes. Now, those trading balances I have referred to, this trading balance is merely the result of the trading for a particular period of time. After the current revenue received has been charged with losses incurred and expenses paid during that period, no matter when incurred; but we have discussed before, the existence of expense and time of paying it, they are almost simultaneous; they coincide.

Q. If in your company during any given year you take in one hundred thousand dollars in premiums, as an illustration——

A. (Interrupting.) Yes.

[fol. 968] Q. (Continuing:) —you pay fifty thousand dollars in losses, as an illustration, and your expense, direct and allocated, and all charges, are forty thousand dollars, you will have left then ten thousand dollars, which you take

out of the State of Missouri, at the end of that year, do you not?

A. Yes, that is the trading balance on that operation.

Q. Now, is that an earning on the Missouri business of ten thousand dollars?

A. No.

Q. Isn't it a profit on the Missouri business of ten thousand dollars?

A. Most emphatically not.

Q. It is neither earnings nor profit?

A. It is only a step towards either a profit or a loss.

Q. But it is neither earnings nor profit?

A. It is not a final figure.

Q. I mean that is neither earnings nor profits?

A. It is neither one nor the other yet; because there are contingent liabilities that have been set up in the transaction of that business that have not been matured.

Q. And yet, Mr. Lane, if a bank on the first day of January has ten thousand dollars over and above all of its expenses, charges and payments of all kinds, that is considered an earning of that corporation for that year, regardless of the fact that they have contingent liabilities all over the county, isn't it?

A. That may be so, but the fact must not be overlooked that an insurance company is not a bank.

Q. All right. Now, let us take a bank and an insurance corporation, Mr. Lane. You are president of each of them, we will say. On the first day of January you look over the [fol. 969] bank's accounts and you find that it has ten thousand dollars, after the payment of all of its expenses and charges of all kinds that year. Is that profit for that year?

A. Well, not having had any experience as a banker I can't answer that. I will answer it in this sense: that if proper reserves have been made and as I understand it most banks do set up two accounts in dealing with their profits as you and I are speaking of them now, that is an undivided account and surplus account—now, if they make a loss on a transaction that arose originally in this accounting period, and the loss ensues later, they charge it to their undivided surplus account.

Now, in this same sense the unearned premium account will stand in the analogy between banks and insurance

companies. The corollary of your proposition is this: that if out of one hundred thousand in premiums in Missouri in a given time fifty thousand losses, forty thousand dollars expenses, leaving a balance of ten thousand dollars, which I cannot say is either profit or earnings as yet, being only a step towards the final maturity of the account—the corollary, I say, is that if you will say that that ten thousand dollars will answer all of the liabilities that may arise out of the transaction, then it can be answered. Otherwise it cannot be answered. Time alone will answer it.

Q. But you don't take the position that in distributing a dividend of a corporation it cannot be distributed in a given year because of some contingent liabilities which exist in the future, do you?

[fol. 970] A. No, but I take the position that no sound business will know of any contingent liability and pay a dividend unless it sets up a reserve against that contingency before it declares the dividend, and certainly our board of directors would never declare a dividend without so doing.

Q. Let us take the bank of which you are president again, and it has ten thousand dollars at the end of the year, and it sets up a hundred thousand dollar reserve, if that will suit you, and paid everything of all kinds. You have got ten thousand dollars left. You have set up your $100,000 reserve figure; then that the bank has earned ten thousand dollars that year—that is possible in the banking business?

A. I couldn't answer definitely. I should say that is profit on their transactions that year.

Q. All right. Now, remember this bank has a good many liabilities outstanding in notes, money that it has loaned to farmers that may not be paid.

A. I would say they were assets. You don't know until he refuses to pay that it is a liability; on the books of the bank it would be counted as assets.

Q. All right. You told me you carried your unearned premiums as an asset?

A. No, I never told you that. They are carried as a liability; always.

Q. Didn't you tell me that you carried unearned premiums both as an asset and a liability?

A. No; not only—no, not in our accounting. If I did I made a mistake that I desire to correct.

Mr. Leahy: You did not so testify.

Mr. Barker: I think you did.

[fol. 971] Do you remember telling the Commissioner in answer to his question that as to the creditors of your company you carried your unearned premiums as an asset?

A. I remember distinctly of saying, even without consulting my memory as to what I did say here, that in the event of a conflagration that all of the funds possessed by the company would be answerable for that.

Q. Therefore you told the Commissioner they were assets didn't you?

A. In that sense.

Q. Yes. Now, then, Mr. Lane, this bank, now, of which you are president, has ten thousand dollars. It has notes standing out which it carries as assets, but of course which it may lose. It has its building which it has paid for. It may be unfortunate in not having insurance. It has a good many contingent liabilities. That would not prevent you as president from distributing that ten thousand dollars as a dividend to your stockholders, would it?

A. Not necessarily so.

Q. All right. Now, take your insurance company of which you are president. At the end of the year after setting aside your reserve and after payment of all your expenses and charges of all kinds you have ten thousand dollars left, as president of the insurance company. Is there any difference now between the ten thousand dollars you have left as president of the insurance company and the ten thousand dollars you had left on the same date as president of the bank company?

A. There is only this difference—that as you frame the present question it differs from the previous question. You said, "All charges." A proper charge and the charge [fol. 972] required by every state in which we operate is that we set up a contingent fund against that trading balance of ten thousand dollars. If you set up on a risk of one hundred thousand dollars of premiums the approximate required reserve you would have a further charge of sixty thousand dollars to place against the account.

The Referee: I think you and counsel have misunderstood one another for some time. Counsel means that the sum suggested, ten thousand dollars, remains after all reserves which should be held have been taken out, and this ten thousand dollars is a net balance then remaining after all reserve and all contingencies have been taken care of.

A. If that is the case, that ten thousand dollars is ten thousand dollars underwriting profit and the directors would be free to spend it for dividends or anything else they chose.

Mr. Barker.

Q. Just the same as the bank?
A. Just the same as the bank.

Mr. Barker: That is all.

Mr. Folonie:

Q. Do you or does any other company so far as you know in the insurance business separate the unearned premiums or the so-called unearned premium reserve so as to set it up and keep it in a fund separate and distinct from your other assets or property?
A. No.

Mr. Folonie: That is all.

(Witness excused.)

The Referee: It is now two o'clock and we will adjourn until three o'clock this afternoon.

[fol. 973] (Whereupon an adjournment was taken until three o'clock of the afternoon of the same day, at which time parties reconvened at the same place and the following proceedings were had):

Newell S. Barrow, called as a witness on behalf of the plaintiff, having been first duly sworn, was examined and testified as follows:

Direct examination by Mr. Leahy:

Q. What is your name, Mr. Bartow?

A. Nevett S. Bartow.

Q. What is your business?

A. Fire insurance.

Q. You are president of the Queen Insurance Company?

A. Yes, sir.

Q. How long have you occupied that position?

A. Since 1920.

Q. Prior to that what business were you in?

A. I was with the same company as vice president.

Q. As vice president?

A. Yes, sir.

Q. How long have you been in the insurance business?

A. Thirty-nine years.

Q. Holding various positions, I presume?

A. I began as a small boy with the company and have been with the company continuously since 1884.

Q. And during that time have you been connected with various departments of the company?

A. Yes, sir.

Q. Are you familiar with its general business?

A. Yes, sir.

Q. Your business is divided into two classes, I believe——

[fol. 974] Mr. Barker (interrupting): We object to that. The witness has not said anything like that.

The Referee: I take it that is by way of inducement, Mr. Leahy.

Mr. Leahy:

Q. (Continuing.) The one is the financial class and the other is the underwriting class?

A. Yes.

Mr. Leahy: Well, now, I don't know that it will even be necessary, Your Honor, to have him define these various classes.

The Referee: I think the definition of each class is well illustrated in the testimony already taken.

Mr. Leahy: Yes.

Q. I will ask you, then, Mr. Bartow, what in your opinion is a fair and reasonable profit on the underwriting business.

A. Underwriting profit?

Q. Yes.

A. Five per cent, I should say.

Q. Five per cent on what?

A. On the earned premiums.

Q. Your experience with fire insurance companies convinces you that conflagrations take place from time to time?

A. Most certainly does.

Q. And what in your opinion is a fair amount to allow to take care of that contingency?

A. Well, it has been established at three per cent by agreement with the insurance——

Q. (Interrupting.) No, but in your opinion?

A. I would say I confirm that.

[fol. 975] Mr. Barker: I will ask that be stricken out. We don't know anything about this insurance business. We want to get a chance to cross examine.

Mr. Leahy: Very well.

Q. What is your opinion——

A. (Interrupting.) Three per cent.

The Referee: Pardon me. Mr. Bartow, if when you use such expressions as those you are now indulging, if you will kindly indicate the base every time I think it will greatly clarify it. Now, three per cent of what?

A. Three per cent of our premiums.

Mr. Leahy:

Q. Of the premiums written?

A. Yes.

Q. You do business in the various states of the Union?

A. All of them.

Q. Now, with reference to the premiums paid in various states, do they differ with the states or are they uniform?

A. I should say they differ. The average is about—for the whole country, is somewhere around a rising twenty per cent, I should say.

Q. Rising twenty per cent?

A. Yes.

Q. And under certain circumstances it would be more than twenty per cent?

A. Yes.

Q. How much?

A. Well, in some states it would be as high as thiry per cent—in some cities.

Q. In your opinon are the commissions paid reasonable?

A. I think they are.

Q. In your thirty years of experience and opportunities you have had to investigate the subject, you think the com- [fol. 976] missions now paid are reasonable, all things considered?

A. I think there may be some high points which we would like to reduce, but I think the average as a whole is reasonable.

Q. The high points you refer to are the excepted cities, are they?

A. Yes, sir.

Q. And the companies have attempted to lower the rates—or the commissions—in those excepted cities?

A. Well, yes; they are trying now.

Q. But competition makes it necessary to pay these rates?

A. Yes, sir.

Q. Now, with reference to the salaries paid the officials and employees of your company, you are familiar with them, are you?

A. Yes, sir.

Q. And from your knowledge of the business and your knowledge of the duties incumbent upon these officers and employees, the services they render, you agree the salaries to be reasonable, or conceive that?

A. I do.

Q. What is the nature of the securities in which your capital stock is invested?

A. Our securities are very largely government bonds, municipal bonds, state bonds, railroad bonds, some railroad stocks, and a few mortgages on New York City real estate.

Q. Why do you not invest more of your monies in real estate mortgage bonds?

A. Because we wish to keep the company in a liquid con-

dition; mortgages we do not regard as a very liquid condition.

Q. What was the experience of the companies who had a large percentage of their assets invested in real estate [fol. 977] securities after the Frisco fire?

A. Well, I have no very intimate knowledge on that subject. An officer of one company informed me that he had to make arrangements to realize upon his mortgages in some way, but I am not familiar with the details.

Q. You do know, however, that in times of stress that it is not easy to cash them at their face—real estate securities?

A. That is my judgment.

Q. It is a limited market, they are not listed, and you have to find someone willing to buy at a price?

A. You would.

Q. Whereas with reference to your bonds such as you have described, and stocks such as you say you hold, there is a continuing market from day to day and the quotations appear in the papers?

A. That is correct.

Q. Now, are there any of these stocks which you say you have invested in that are speculative stocks?

A. We don't so regard them. We regard them—did regard them when we made the investment, as very high grade investment stocks. They are very largely what is known as guaranteed stocks.

Q. About what amount of cash do you keep on hand at all times?

A. Well, we endeavor to keep the cash on hand about two hundred thousand dollars. It ranges from two hundred thousand to five hundred thousand dollars.

Q. And when your cash account exceeds or substantially exceeds the sum of two hundred thousand dollars, what do you do with the money?

A. We invest it.

[fol. 978] Q. Now, what are the sources from which you secure these funds?

A. They are derived from remittances from agents for balances due on premiums and from the interest from investments.

Q. Do you know or is there any scientific way of figuring what is the earning on the unearned premium?

A. I don't know of any particular scientific method—of investing, you mean?

Q. No, of figuring what the earning is on the unearned premium?

A. The interest earning?

Q. Yes.

A. I don't know, but it does not vary. It does not vary from the interest derived from the ordinary investments of the company. We do not earmark the account invested on behalf of the unearned premium fund—if that answers your question.

Q. When this fund or when those funds come in you simply await the time that you have a sufficient amount and then invest them?

A. That is correct.

Q. And you don't designate these investments as "surplus capital," or "unearned premium" or any other?

A. No, we do not.

Q. Is it the practice of the agent who secures the business to deduct his commission before he forwards to you the balance that is due?

A. Yes.

Q. Is that a universal practice?

A. Yes.

Q. What are the functions of an agent who secures this business, say in our state?

A. Well, he is of course regarded as the producer. He solicits his business, he writes the policy, tends to the clerical [fol. 979] labor or pays the clerical labor in connection with the gathering of the business, from its writing to the delivery to the assured.

Q. He maintains an office, does he?

A. He does.

Q. At his own expense?

A. He does.

Q. And all of the expenses incident to that office does he pay?

A. Yes, sir.

Q. Now, state whether or not it is usual with agents in

large cities to make an investigation of the risk so as to reduce, if possible, the rate for the assured?

A. Well, where the risk is rated upon a schedule that schedule is made up of a multiplicity of charges and credits. If he studies that schedule—he will either visit the risk himself or he will have one of his staff visit the risk to determine whether or not there are any improvements which can be made in that building which may eliminate the specific charge on the schedule. If he can bring about that improvement in a manner which is satisfactory to the rating officer he will receive a credit on the schedule and the rate will be reduced by the amount of the debit on the schedule.

Q. Where any substantial risk is assumed by the company is it customary for the agent to make an investigation and an inspection?

A. Well, he will himself; on a simple risk I would say no, as for example a dwelling or mercantile building. He will know the risks in his town, though, in a general way.

Q. And you employ him because of his knowledge of local conditions?

A. Exactly.

[fol. 980] Q. Now, what means is there afforded for securing a description of the property?

A. Well, we have a provision on the back of a report which he sends to us which will require the information to be recorded there as to what the occupancy of the risk for example is, the exposures and a few other rough outlines.

Q. Have you got a rating bureau? Do you know anything about the rating bureaus in Missouri?

A. Not in Missouri, no. That is under the jurisdiction of our manager in Chicago, which is known as the western department.

Q. Well, in that western department is there a description of the risk in your company—in your office?

A. I would say undoubtedly there is, of the large risks particularly. There is a map which delineates every risk for instance, in St. Louis, unless it be a district very far out of the city, isolated district. Those maps are carefully made. They contain essential information to judge of that risk.

Q. And you have employes whose business it is to make an investigation with reference to the risk?

A. We do.

Q. Now, do you apportion to each state a certain portion of the home office expenses?

A. We do not. We don't have any system of keeping the expenses allocated to each individual state.

Q. Do you, for instance, charge Missouri with any part of the expense with reference to your investments, in mak- [fol. 981] ing your annual statement in the State of Missouri?

A. The State of Missouri requires in its annual blank a statement of our premiums, our net premiums, and the losses on the business. It is my recollection there is no column in that blank for a specific allocation of expenses particularly applicable to Missouri. We state our expenses in bulk for the whole company.

Q. How are your investments made and by whom Mr. Bartow?

A. Well, I would first analyze the security. Of course, if it seemed of a grade sufficiently high to bring before our finance committee I would submit it to them for their authority to make investment. No investment can be made until it is approved by the finance committee of the board of directors.

I would be very careful not to submit to them anything which I felt there was the slightest shade of doubt about.

Q. Well, has it been the custom or do you know of any instance where a member of your board of directors or an official of the company induced you or the finance committee to make investments in securities of a company which was owned or controlled by [illegible] officer or representative?

A. No. I would qualify that by this statement; my company owns some of the shares of the Farmers Loan & Trust Company, which was bought by the company many years ago. The president of that company is a director of my company but we never bought the shares at the instance of the officer of the Farmers Loan & Trust Company, or an officer.

Q. When did he become a member of your board of directors?

[fol. 982] A. Well, the present president, a short time. About, I think, a year. He succeeded the former president of that company. This investment was made when the company was formed; in fact, was taken over by the British company of which the present Queen is its successor.

Mr. Leahy: That is all.

Cross-examination by Mr. Barker:

Q. Now, you are president of the Queen City—what is the corporate name?

A. Queen Insurance Company of America; New York.

Q. Queen Insurance Company of America. That is incorporated where?

A. State of New York.

Q. What is its capital stock?

A. Three million dollars.

Q. Three million dollars. Is that an old company, Mr. Bartow?

A. Incorporated in 1891.

Q. What was its capital then?

A. $500,000.

Q. $500,000. Now, of your three million capital how much have the stockholders paid in on that?

A. $500,000. They also put in one million dollars to surplus.

Q. I am talking about your capital. What is the surplus?

A. Our surplus today is about five million dollars; rising five million dollars.

Q. On your capital account of three million dollars your stockholders have paid five hundred thousand?

A. Correct.

Q. And you have a surplus account of about five million?

A. Correct.

[fol. 983] Q. And your stockholders have paid one million of that?

A. Correct.

Q. What is the value of your stock now?

A. Well, it is not traded in in the market. I couldn't tell you. It has no market value and the fact is that it is not traded in on the street.

Q. Isn't it listed?

A. It is not.

Q. Not listed?

A. No.

Q. What do you carry it on your books at?

A. We carry it at its par value.

Q. Carry it at—what is the par value of each share of stock?

A. One hundred dollars.

Q. You carry it on your books at a hundred dollars?

A. We do.

Q. You know what I mean by the book value of stock?

A. I do.

Q. As president of the insurance company, what is the book value?

A. I haven't computed it recently. I couldn't tell you.

Q. Well, let's compute it. You have five million surplus. You have got three million capital. That is eight million dollars.

A. Yes.

Q. There has been $1,500,000 paid in for that?

A. Yes.

Q. Now, what does that make the stock worth?

A. Well, there is the difference between $1,500,000 and $3,000,000, is that what you mean?

Mr. Leahy: No, he means to add the capital and surplus together and divide them by the capital.

[fol. 984] Mr. Barker:

Q. Well, your stock is worth about nine for one, isn't it, Mr. Bartow?

Mr. Leahy: That is not the book value. You asked for book value.

Mr. Barker: Read what I asked him, Mr. Blume.

(Question read by the reporter.)

A. There is three million dollars capital and five million surplus.

Mr. Barker:

Q. What dividends have you paid? You must consider that.

A. You mean at the present time?

Q. No, covering the period of the last ten or twelve years. That would affect its value, you know.

A. We are paying today twenty-three and a third per cent.

Q. Well, you have averaged that for ten years, haven't you?

A. Oh, I should say—I couldn't tell you exactly for ten years. I haven't figured the average dividend for ten years. The average dividend since the company was formed is about—the average dividend on the capital, including the amount in surplus, is about ten per cent. There were a number of years when the company was formed when there were no dividends paid. They were building the company up.

The Referee: Pardon me one moment, gentlemen. Perhaps you stated, Mr. Bartow, I don't recall that you did, what the book value of the stock now is.

A. I haven't figured it.

The Referee: Can you do that readily?

[fol. 985] The Witness: Mr. Thompson, have you figured the——

Mr. Barker (interrupting): Have you got Mr. Best's book? He figured it for you.

A. I have it, but it is not here, though.

Q. He figured your stock about nine for one, that's right, isn't it?

A. You mean taking the present capital of three million dollars?

Q. Yes, the present condition of your company.

(No answer by the witness.)

Q. Well, I don't care, if you don't know.

Mr. Leahy: $236 a share, its book value.

The Witness: Well, I don't know. I haven't figured it out.

Mr. Barker: All right.

Q. Now, then, Mr. Bartow, your company is incorporated as a fire insurance stock company?

A. Permitted to do other classes, also.

Q. What other classes?

A. Marine, automobile, explosion, riot and civil commotion, sprinkler leakage, tourist.

Mr. Leahy:

Q. Hail?

A. No, we don't transact hail. We could do hail if we wished to.

Mr. Folonie:

Q. Tornado, you didn't mention.

A. Tornado; all the things permitted by the State of New York.

Mr. Barker:

Q. You are not incorporated as a bank?

A. We are not.

Q. You are a fire insurance company?

A. We are.

[fol. 986] Q. Just one activity of your company, and that is fire insurance?

A. We do these other classes which I am explaining. We do marine, tourist, sprinkler leakage, explosion, riot and civil commotion, and tornado; all of those are permitted a fire insurance company to transact.

Q. Now, you told Mr. Leahy that your business was divided into two classes——

A. (Interrupting.) I did not, no, sir.

Q. You didn't tell him that?

A. Oh, I beg your pardon as to that.

Q. One was the banking and investment business, I believe he called it, and the other is the insurance business, is that right?

A. I understand he was inquiring what were my duties.

Q. No, he was not inquiring about your duties, I don't think. Then your business is not divided into two classes, it is one class, isn't it—under your charter?

A. Under your question now, yes.

Q. Now, as an incident to the fire insurance business when you accumulate money you invest it, naturally?

A. Yes.

Q. Now, your board of directors and yourself, finance committee or whatever they are called, they control your investments, do they, Mr. Bartow?

A. Yes.

Q. And your finance board or your officers have a right to invest your money in any form of security they desire?

A. No.

Q. Why not?

A. They are controlled by the statute of the State of New York.

[fol. 987] Q. What does the statute of the state of New York say you may invest in?

A. I will answer to the best of my recollection. The state government, municipal bonds, and the bonds and stocks of any solvent corporation; mortgages.

Q. Now, the stock of private corporations is more or less a hazardous venture, is it not, Mr. Bartow?

A. Some of them.

Q. You would not regard the stock of a private corporation as solvent as a real estate mortgage on fifty per cent valuation, would you?

A. I might, on analyzing the security.

Q. A real estate mortgage at fifty per cent of the value of the land is considered a good security, is it not?

A. Yes, sir; well located.

Q. Sure. I realize that. You live where?

A. I live in the State of New Jersey, in the village of South Orange.

Q. You have some farming land in New Jersey?

A. I suppose there are some. There are not many near me.

Q. Ohio and Indiana and Illinois and Missouri and those states have good farm lands?

A. Yes, I assume they have.

Q. Now, then, you say that a real estate mortgage is not liquid. Isn't a real estate mortgage as liquid as the stock of a private corporation?

A. I don't think so; if it is a good corporation. Depends on the stock—depends on the corporation.

[fol. 988] Q. Now, you know something about the business of the real estate mortgage companies throughout the United States—being a man of finance you must know that, don't you?

A. Yes, sir.

Q. We had over in Kansas City some ten of those companies that haven't had a loss since the Civil War. They have few losses, don't they?

A. I don't know anything about their operations.

Q. But you would think if you had a mortgage on a farm in Ohio, properly appraised, the title perfect, fifty per cent of its value, you would have very little chance you would think that you would have very little chance for a loss?

A. Well, I don't know.

Q. Don't you know if you had that kind of a mortgage you could liquidate it just as easily as you could liquidate a stock in a private corporation?

A. I don't know it, sir.

Q. Now, there is just one instance in your company, I understand, in which your company has some of the securities in which one of your officials is an officer of that company?

A. No, not—well, if you are speaking of a director in the sense of an officer. One of our directors—two of our directors in the same company Farmers Loan & Trust Company.

Q. The officials of your company and directors are interested in other corporations also, I assume?

A. I don't know anything about it.

Q. Are you interested in any—officer or director in a private corporation other than your insurance companies?

A. Well, I have a few investments.

[fol. 989] Q. I mean are you interested as an officer or director in any of them?

A. No. I am a director of one other corporation, and that is the Newark Fire Insurance Company of Newark, New Jersey. I hold only qualifying shares as director of that corporation.

Q. You wouldn't say it was good business judgment for the directors of your company to purchase securities from private corporations in which they were officials and directors, would you?

A. I would not, no.

Q. No. Now, you say five per cent is a fair underwriting profit, is it?

A. I think so.

Q. Has your company ever made five per cent underwriting profit since you have been connected with it?

A. The last ten years we have made five per cent underwriting profit.

Q. The last ten years you have made five per cent underwriting profit?

A. Yes.

Q. In the insurance world isn't one per cent underwriting profit regarded as a very high underwriting profit?

A. I don't think so.

Q. You tell me that your company has made five per cent underwriting profit for how many years?

A. The last ten years—it would average that, I should say.

Q. The rest of your profit comes from your investments?

A. Yes, sir.

Q. Now, you say that three per cent is a fair conflagration reserve, is it?

A. I think so.

Q. Do you set that aside and maintain it as such?

A. We do not.

[fol. 980] Q. Then you are collecting from the policy holders of Missouri three per cent for a conflagration reserve which you don't set aside for them?

Mr. Leahy: Just a moment. He did not so testify. We don't know whether he made any money in Missouri during the last ten years or not.

Mr. Barker: This is cross examination and I want to know.

Mr. Polonie: Object to the assumption.

The Referee: The witness can qualify his answer under the circumstances. Objection overruled.

(To which action and ruling of the referee the plaintiff by counsel then and there at the time duly excepted and still excepts.)

The Witness: May I have the question again?

(Question read by the reporter.)

A. I should say we haven't done it yet. We would like to.

Mr. Barker:

Q. You have been collecting it, though, for many years, haven't you?

Mr. Leahy: Where, in Missouri? He just said no.

Mr. Barker: Now, I want you sworn if I cross examine you.

Mr. Leahy: All right.

Mr. Folonie: Object to your swearing Mr. Leahy.

The Referee: No objection pending.

Mr. Barker: Well, he has told the witness what to answer.

Q. You understood what he said, didn't you, Mr. Bartow?

A. Well, I said no, we had not been collecting it, in answer to your question.

[fol. 291] Q. Well, I didn't understand you, then. Then you haven't been collecting a three per cent reserve in Missouri?

A. I shouldn't say we had specifically. I am stating in principle what I think we should have.

Q. Well, let's find out. Have you or have you not been collecting three per cent conflagration reserve for Missouri?

A. I would have to answer no.

Q. Then if you regard three per cent as a fair conflagration reserve, why haven't you maintained it to take care of the conflagrations which may come up?

A. You mean why have we not set it aside as a special reserve?

Q. Yes.

A. Well, we haven't done so.

Q. You intend to, you say?

A. I wouldn't say that we had any immediate intention of doing it.

Q. Now, then, since the instance of the Frisco fire your company have recognized the need of a conflagration reserve in order that if another fire of that kind occurs you will be prepared for it, haven't you?

A. Yes, sir.

Q. And you have made provision in your rates for that?

A. Well, I couldn't say that there has been in the past a specific leading of those rates with three per cent. We have in the past assessed a rate which we expected would yield us a sufficient profit.

Q. And a reserve for conflagration?

A. Yes; and also cover conflagrations.

Q. Yes, so you have been collecting that?

A. Well, I should say that the rates that have been made, we endeavored to make them large enough to cover our profit and to take care of our current losses, and allow [fol. 992] something for conflagration; but I cannot say that it has been specifically earmarked at three per cent.

Q. Now, then, Mr. Bartow, you say you are trying to lower agents' commissions, I believe?

A. Yes.

Q. Do you know any reason why the agents in St. Louis should be paid more than the agents of any other part of Missouri?

A. No—well, I will amend that. I would say that in every large city the cost of doing the business is larger than it is in a small country town.

Q. Well, the volume is there, also?

A. It is.

Q. So that equals it up?

A. Yes, but in every city you understand there are brokers that stand between the gathering plant, a great deal of that business in the large cities is delivered to the agents' offices by a broker.

Now, a broker is a necessity. He is put forward by the assured. He is the growth of a necessity. For example, in the City of New York a man desires to cover his insurance, his property, he goes to somebody he knows and says, "What is a good company?" He tells him that he thinks the Queen is a good company. He comes downtown here to our office, or to the agents of the Hartford Insurance Company, if he is recommended to that. He delivers that application there and the agent pays that man a brokerage. Now, that agent gets an overwriting commission in order to get something out of the business himself, and in all large cities we find these brokers. They are performing the office of placing the insurance for the assured.

[fol. 993] Q. Who pays them?

A. The companies allow the agents—the agent will allow the broker a commission for delivering the business in his office.

Q. That is passed to the policy holder eventually?

A. The commission?

Q. No, the expense, that extra expense?

A. Oh, yes.

Q. Your theory of fire insurance is that you charge any kind of rate you want on the theory that insurance is written on a cost plus basis? That is your theory, isn't it?

A. Yes.

Q. Expenses make no difference because it is passed right on to the policy holder?

A. Oh, no. We are endeavoring to reduce these expenses all the time.

Q. I see. Now, then, Mr. Bartow, your expenses, take for the last four or five years, covering between '17 to '21 inclusive, can you tell me about what your expenses have run in percentage—say about forty five to fifty per cent?

A. Oh, no.

Q. About what?

A. About an average of forty-two, or forty-three, I should say.

Q. That means that for every dollar which you take from the policy holders it costs you about forty-two cents?

A. Yes.

Q. To carry on your business.

A. Yes.

Q. Now, your loss ratio is about forty-five or fifty per cent?

A. Fifty; on an average, I should say.

Q. Leaving you net about eight cents out of each dollar?

A. Yes.

[fol. 294] Q. Mr. Bartow, don't you regard forty-two cents out of each dollar for the expense of your company as outrageously high?

A. I don't think so, not considering the necessity of maintaining these extra plants or these agencies, this agency system under which we must have business handed to us. There is no large system that can supersede that without incurring in my judgment an expense equally as great. He must have these agents in the towns and they must protect

us with the local knowledge of the business in the community.

Q. Are you familiar with the commission of a loan agent in securing loans?

A. No.

Q. It runs about five per cent, does it not?

A. I don't know.

Q. Well, now, let's see, real estate—I mean a fire insurance agent for you writes a risk on a house in Missouri or the man comes to his office and asks for the insurance, or if he goes to the man he solicits the insurance.

A. Yes.

Q. Now, if it is a one year policy he keeps a list of the renewals and at the end of one year unless notified to the contrary he writes it again?

A. You are talking about fire insurance now?

Q. Yes.

A. Yes. He will ask him if he wants it renewed. He will find out.

Q. Yes; probably call him on the telephone?

A. Yes, he could.

Q. And the first year the agent, you say, gets twenty or twenty-five per cent commission?

A. Yes.

{fol. 995} Q. The second year he gets him on the telephone and it is renewed and he gets twenty or twenty-five per cent more commission for the renewal?

A. Yes; during the year he may have done it two or three times for all kinds of endorsements on his policy.

Q. If he wanted to put in a gasoline station he would get an endorsement?

A. Yes. Come in and talk it over and take up his time, and he may have to go and visit him two or three times, examine his risk—even his renewal.

Q. And inquire about his family and about his health? And have a visit?

A. I should hope he would be diplomatic, yes.

Q. At the end of four years the renewals that he got, if he got twenty-five per cent he would have one hundred per cent, wouldn't he?

A. If you figure it that way.

Q. Now, let us take a loan agent——

A. (Interrupting.) Excuse me. He would have had one hundred per cent of one year's premium, you mean?

Q. Yes.

A. Yes; not one hundred per cent of the four years.

Q. The insurance man happens to be a loan agent at the same time. He makes a loan on this man's property now. For that he will get about a five per cent commission as against the twenty-five per cent he gets for writing the insurance policy. Is that right?

A. I don't know. Would it be five per cent—on what?

Q. Amount of the loan.

A. I am unfamiliar with loan matters.

[fol. 996] Q. Well, you wouldn't think a loan agent should get twenty-five per cent commission for writing that loan?

A. Well, I shouldn't think he would get twenty-five per cent of the principal, no.

Q. You are speaking about conflagrations—you were speaking about them. Take conflagrations, now, like the San Francisco fire, they are a very helpful thing eventually to insurance companies, aren't they?

A. I don't think so. I don't like them.

Q. But, now, as affecting business, it makes people insure more and in the end it is a very helpful situation, isn't it?

A. I wouldn't define it as that. I would rather conduct business without conflagrations and exercise every power we have to reduce a hazard and write the business at a lower rate and increase our lines than to have conflagrations and compel an increase in rates.

Q. Don't you know that after the San Francisco — if you are riding with a man on the train, a friend of yours going home, and the next day you find out that he has been injured in an accident, that that is an incentive to you to get an accident policy?

A. Well, I think it is a bad principle for anybody to assume that is a good thing for any business; that the disasters of life make business for anybody. It may be a fact of life but I wouldn't advocate it as a settled and fine principle for insurance companies to assume as a part of their policy.

Q. Don't you know as a matter of experience that — fire your company and other companies sent out advertisements [fol. 997] nation-wide, throughout America, calling atten-

tion to the perils of the San Francisco fire and advising people to insure?

A. Wouldn't that be our duty?

Q. You did it, didn't you?

A. I presume it was done.

Q. And it resulted in vast sums of insurance?

A. There was an increase.

Q. Yes. So from a strictly business viewpoint the conflagration is a good thing for the insurance companies?

A. No, I say it is an immoral principle.

Q. No, getting away from the immoral idea, it is a good thing from a business standpoint, isn't it?

A. No, I don't think so. I think it is wrong.

Q. Yes. Now, Mr. Bartow, you are familiar with what is known as the Sanborn maps, aren't you?

A. Yes.

Q. Now, those Sanborn maps are maps which are prepared showing the location of property and the kind of property in every location in the United States, are they not?

A. Not every location.

Q. Well, a few, yes.

A. The principal cities and towns and many of the smaller towns, but not every one.

Q. Now, your agent, take in a town like Moberly, Missouri, or Springfield, Missouri, they have the Sanborn map which shows that on Lot 1 in Block 4 in Adams Addition there is a building on that lot, don't they?

A. Yes.

Q. And they turn to that page and find out whether it is a frame building or a stone building?

A. He would if he didn't know the property, yes.

[fol. 998] Q. Yes. But it is on there?

A. Yes.

Q. Yes, and your office has those maps, both your Chicago office and your New York office?

A. Yes; not of the same towns. We have the maps of the towns in our territory and he has the maps of the western territory.

Q. Yes. So the man in his office in Chicago can turn to his map and find out what kind of a building is on Lot 1, Block 4, Adams Addition to Moberly?

A. Yes.

Q. And he can tell whether it has a shingle roof or a tile roof?

A. Yes.

Q. He can't tell from that the value of the building, can he?

A. He can only approximate it.

Q. There is no value placed on it?

A. No.

Q. It requires the presence of some man on that lot to view that building and to write that description down, doesn't it?

A. Yes.

Q. When that man—if that man at the time he did that should have placed a value of five thousand or eight thousand or any value he wanted on that building—he could have done that, could he not?

A. He could have done it, but I wouldn't accept his judgment. I don't know whether he would be qualified to value a building. He might have no knowledge of the location of the city.

Q. If your agent was with him, in that town, being familiar with the town, the agent would know and could tell him about the value of the property?

A. I wouldn't want to embrace that principle.

[fol. 269] Q. It would be a very simple matter to get the value of that property from your agent at the time the map was made, wouldn't it?

A. I wouldn't say that it would be a simple matter.

Q. Do you have any trouble with the question of over-insurance?

A. You mean as disclosed by losses?

Q. Yes, sir.

A. There are some cases of over-insurance but I would say that they are very few in proportion to the whole.

Q. One of the great questions, I take it, in the insurance business, that the insurance companies have, is to prevent over-insurance, isn't it?

A. Yes.

Q. Now, on household goods, no examination is made at all of household goods before insurance, I take it?

A. Occasionally.

Q. A man telephones in and says, "I have some house-

hold goods out at 5018 Troost Avenue, I want it insured for $2,500''—he gets a policy for that?

A. Yes, if he is a well-known man of good standing in the community and our agent has knowledge of his character. We have no system which would permit the expense of examining and assessing the value of this vast class of business in the United States. If we were required to do it the rates would have to be doubled or trebled.

Q. This agent wouldn't write that man at all unless he knows him?

A. Well, I wouldn't say that. He might.

Q. In other words, a stranger coming into town would probably never get any insurance at all?

A. Oh, yes, he would.

[fol. 1060] Q. Well, you don't know him and don't look at the property?

A. Well, if a man comes into a town and rents a house in a good neighborhood our agent I think would insure it.

Q. Without seeing his property?

A. Yes. He might go and see it if he judged the circumstances were such as would require an examination. He would use his judgment about that.

Q. You consider the moral risk, then?

A. We certainly do. Every risk that is reported into our office goes through an inquiry as to its—the character of the assured.

Q. Your company has considerable experience in re-insurance?

A. Yes, sir.

Q. Do you cede more than we take?

A. Oh, no. We cede less than we take.

The Referee: Cede less than the total volume you take yourself, or than the amount you take in the form of re-insurance?

A. We receive less in the form of re-insurance than we write. If our premiums were twelve million dollars we might pay off in premiums for re-insurance two million dollars, something of that kind.

Mr. Folonie: Ceding and re-insurance—may I suggest——

A. (Interrupting.) Ceded means a risk taken in our office and the excess placed outside, with one of our associates.

The Referee: Do you cede or assume more insurance?
[fol. 1001] A. Well, we assume a vast deal more than we cede.

Mr. Barker:

Q. The smaller companies cede insurance to you?

A. Well, they offer us lines to write. It is a matter of selection. We exercise our judgment as to whether we take the line or not.

Q. If you take the whole line, or say a building has a million dollars of insurance, not wanting to take that much insurance you cede part of it to some other company?

A. We would go to our associates and offer them a share of that risk.

Q. And you take their business the same way?

A. If it is desirable, yes.

Q. Now, then, there is an extra expense, of course, for handling re-insurance?

A. Well, I shouldn't say an extra expense. There is an expense in handling it.

Q. Over and above the premium, I mean?

A. Well, it does not cost all the premium to handle it. Is that what you mean?

Q. No. You take the risk, for instance, at a million dollars.

A. Yes.

Q. You desire to cede $500,000 of it. Now, you collect the initial premium?

A. Yes.

Q. If you cede $100,000 to one company you pay them the premium on $100,000?

A. Yes.

Q. You cede the second $100,000, and you pay them the premium on that $100,000?

A. Yes.

Q. The overhead expense and the expense of handling re-insurance is very great, is it not?

A. Well, I shouldn't say it is very great. It is something.

[fol. 1002] Q. I believe it has been estimated in the insurance journals at about four and a half per cent—would that be high enough?

Mr. Folonie: Of what?
Mr. Barker: The premium.

A. I have no way of either confirming or refuting that.

Q. But you know the handling of insurance six or eight times costs more than handling it once?

A. Sure, yes.

Q. Re-insurance is only helpful to the big insurer and not to the smaller insurer?

A. Well, I don't agree with you on that. If we have more than we desire on a risk and we give a certain line to one of our competitors, if that is a good risk to get on his books, I don't know why that is not as good a thing for him as it is for us. He wouldn't take it unless he expected to make money on it.

Q. I say the effect of re-insurance is that it is helpful to the big policy holder but it means nothing to the small policy holder?

A. I don't agree with you on that. I think the man with a modest dwelling, that is an advantage to him to deal with one company rather than five companies if he has a loss. I think there is an equal advantage to either big or small insurers.

Q. Take a fire risk on a five thousand dollar building, you would not cede that to anyone, yourself?

A. Oh, no.

Q. You would carry that?

A. Surely.

[fol. 1063] Q. If a man came to you, though, with a hundred thousand dollar building you would cede some of that?

A. Depending entirely on the risk; might carry the whole thing.

Q. Well, make it a five million dollar building, then, would you carry that?

A. Not on one building, no.

Q. No, of course not. Then you would cede where the property is valuable and where the property is not so valuable you would hold?

A. I don't think that is a rule that can be universally applied. It would apply in some cases.

Q. Have you ever ceded a fifteen hundred dollar or a two thousand dollar dwelling?

A. I don't think so. I should think that we could not, if we could not carry that on a dwelling——

Q. (Interrupting.) Your company is perfectly able to carry a fifteen hundred dollar dwelling?

A. Sure.

Q. Is it able to carry a ten million dollar building?

A. No. We might take a chance but I wouldn't as an underwriter take such a chance.

The Referee:

Q. About what amount, Mr. Bartow, generally speaking, would re-insurance be deemed advisable?

A. It all depends upon the risk entirely. If it were a country mansion located out here on Long Island or the outskirts of St. Louis, with no protection whatever, we would write no more than five thousand dollars at the outside. If it were on a fireproof building across the street [fol. 1004] here in New York we would write five hundred thousand dollars on it for our own account. If it were a sprinklered risk of a good character located in a town like St. Louis or even a smaller town we would carry possibly seventy-five thousand of it, according to the character of the manufacturing and the character of the protection.

If in addition to that it was fireproof and was protected by automatic sprinklers we might carry even more. Every risk has its own line or class.

The Referee:

Q. Whether or not there is any sort of roughly dividing line in amount only?

A. Well, we have a very carefully adjusted scale of maximum limits that we carry upon any one risk.

The Referee: No, I still haven't made my meaning clear. You said in substance a few minutes ago that you wouldn't think of ceding insurance on a small policy of fifteen hundred dollars or some such amount as that.

A. On a dwelling:

The Referee: About what size policy is it that you begin to consider the feasibility of ceding a portion of that to some other company?

A. I will have to say again that it depends entirely on the risk. If it were an unsprinklered shoe factory in New

England, we would begin to cede when the line got above fifteen hundred dollars. It is a poor class of business in my judgment. We don't want to hold that more than fifteen hundred dollars. If it were a dwelling such as I cited a few minutes ago we will begin to re-insure when the line reaches five thousand dollars and over.

[fol. 1005] Mr. Barker:

Q. Now, your company has what is called a direct expense in Missouri, which means the expenses which are chargeable directly to the State of Missouri?

A. Such as taxes?

Q. Yes, commissions, taxes and so forth.

A. Yes.

Q. You have also what we call an allocated expense to Missouri?

A. Well, as I have testified before, we do not allocate expense to the various states.

Q. Well. Now, then, take your salaries, your home office salaries and all the expenses of your company throughout the United States, including Missouri. At the end of the year, for instance, you figure what your total expenses are?

A. Yes.

Q. That gives you a certain figure. Now, then, you apportion as against Missouri, her proportionate part of that expense, do you not?

Mr. Folonie: We object, if the court please, to the line of questioning as indefinite, because it does not define apportion, or state where. On their books, annual statements or their underwriting by classes statement, or just where he is asking for the making of the division. I think any answer the witness would make would be misleading.

The Referee: The question as framed covers a brief inquiry. Overruled.

To which action and ruling of the referee the plaintiff by counsel then and there at the time duly excepted and still excepts

The Witness: Shall I answer that question?

Mr. Barker: Yes.

[fol. 1006] A. As I said before, we do not specifically al-

locate on our books expenses to the State of Missouri. All this overhead, I take it you are referring to. If we were computing the amount of the overhead that should be apportioned to the business generally I should say it would be about nine per cent, say of our forty-two or forty-three which we would regard as overhead expenses.

Q. Now, then, for instance, if Missouri produced ten per cent of the business of the United States then Missouri would be chargeable with ten per cent of your expenses?

A. Of overhead.

Q. No, I didn't say that. I said all expenses. I don't care what you call them.

A. I would say that Missouri must—every state must bear its share of the expenses of the average of forty-two.

Q. Sure. And Missouri bears its proportion in accordance with the business produced in Missouri?

A. If we were allocating it throughout the state we would have to apportion her proportionate share of it, pro rata.

Mr. Barker: Sure.

Mr. Leahy: But you don't do it.

The Witness: No, we don't do it. I have said twice we do not do it.

Mr. Barker:

Q. Missouri is charged then by your company with only its direct expenses, is that right?

A. Well, we don't charge the various states specifically with those expenses.

Q. With any expenses?

A. No. The blank does not call for it, to my recollection. [fol. 1007] Q. I am not referring to any blank or anything else. I am just asking you as the executive of this company—Mr. Folonie has suggested to you a minute ago that you filed three reports in Missouri, the annual statement, the tax statement, and the underwriting report. I am not referring to these but asking you only if you paid Federal taxes, for instance, of five thousand dollars, is Missouri charged with the payment of any of that five thousand dollars by your company?

A. Not specifically.

Q. What do you mean by that, and how is it charged?

A. We gather together the total results of the company

in the whole United States and we make up one blanket statement in our office here in New York and we figure up the amount of it. We don't take every one of those states and then apportion back to every one of them. If we were analyzing very carefully and accurately in a state of course it would have to be done.

Q. Then if you pay a tax of say five thousand dollars a year to Missouri you have no means of charging that to Missouri in determining whether you have made a profit or loss in Missouri?

Mr. Leahy: He says all the expenses of Missouri are charged to Missouri.

Mr. Barker: Did you hear Mr. Leahy?

A. Yes. Mr. Thompson, is that correct?

Mr. Barker:

Q. Mr. Leahy says you just said it. Did you say it?

[fol. 1008] Mr. Folonie: We object to the form of the question.

Mr. Barker:

Q. Mr. Leahy just said that you said that.

The Witness: Said what?

Mr. Barker: That Missouri paid its direct expenses.

A. It pays its taxes and its commissions to its agents, of course, but I have understood that your question referred to all of these overhead expenses outside of the State of Missouri.

Q. I see. We misunderstood each other. We will take Missouri alone first. The expenses arising in Missouri, taxes and commissions and agents' salaries and traveling men, every expense in the State of Missouri, if that amounts to forty thousand dollars a year you charge Missouri with forty thousand dollars a year in determining whether you have made a profit or loss in that state, or do you not?

A. Well, we would have to include also the proportion of our overhead, as I have stated.

Q. Take Missouri alone. If you have forty thousand dollars expenses in Missouri, in a given year do you charge Missouri with that forty thousand dollars?

A. Well, I should say we do.

Q. Well, do you know whether you do or not?

A. Well, I am not the accountant and I couldn't tell you just exactly how that statement is made up.

Q. Then in determining whether you made a profit or a loss in Missouri would you charge Missouri with her pro-
[fol. 1009] portionate part of what you call your overhead expense?

A. Certainly would; every state.

Q. So then, getting back to where we started, you charge Missouri with her direct expenses and then apportion to Missouri, her share of the expenses of the whole United States?

A. Yes.

Q. That is right. Now, in the expenses apportioned to Missouri, you include all the expenses of your company?

A. In Missouri?

Q. No, apportioned.

A. With what—yes, we would.

Q. All right. Including home office salaries?

A. In proportion?

Q. Yes.

A. Yes.

Q. Investment expenses?

A. Well, investment expense is charged against the investment account.

Q. And Missouri pays her part of that?

A. Well, I don't think so.

Q. Well, let's see, do you devote any of your time to investments?

A. Yes.

Q. Your directors devote any of their time to it?

A. Some.

Q. Your stenographers work on it?

A. A little, yes.

Q. Your stamps go out in handling it?

A. Yes.

Q. That is all charged to Missouri?

A. That is covered in the item of one-eighth of one per cent which is charged in the investment account. It is supposed to cover those items.

[fol. 1010] Q. What I am getting at is—

A. (Interrupting.) Do you mean do we cover it twice?

Q. Oh, no, I wouldn't think of that. Do you apportion any of your salary, for instance, to the State of Missouri?

A. Not specifically.

Q. Apportion any of your office expense and rent and so forth?

A. Not specifically.

Q. How do you apportion it if you don't do it specifically?

A. Well, in estimating the expense of the State of Missouri, I would make it take its share of the whole of overhead.

Q. Including the investment expenses?

A. No, I should say not.

Q. Then you don't mean the whole of the overhead.

A. Well, the investment expense is charged to the investment account. If you desire to clarify that point further I would ask Mr. Thompson, who is our accountant and who is here and who knows more about the exact detail of that than I do.

Q. But you haven't any doubt, have you, Mr. Bartow, that Missouri pays a part of all your expenses, including investments?

A. I don't think they pay a portion of the investment expense when it is charged to the investment account, and taken out of the earnings on investments.

Q. That is one-eighth of one per cent, you say?

A. Yes.

Q. Is Missouri's proportion of that one-eighth of one per cent charged to Missouri?

A. I don't think so.

Q. Then your theory is that Missouri pays no part of [fol. 1011] your investment expense at all?

A. I don't think it does.

[fol. 1011] Q. Don't think it does. Now, then are you familiar with your three reports which you file in Missouri?

A. Well, what three do you refer to?

Q. The annual statement?

A. Yes.

Q. The tax statement?

A. I am not familiar with the tax statement.

Q. The underwriting experience statement?

A. That is all embraced in the annual statement. The annual statement embraces the underwriting statement.

Q. Are you familiar with all three statements?

A. No. They are handled very largely by our western department.

Q. Your underwriting statement necessarily covers what it implies, your underwriting?

A. Yes.

Q. Your tax statement covers those things relating to taxes?

A. Yes.

Q. Underwriting statement covers your investments, does it not?

A. More than investments.

Q. Including investments?

A. Including investments and underwriting.

Q. Do you sign those reports?

A. I do.

Q. Don't you know that in those reports you apportion, right on the face of them, a part of your entire expenses, including investment expenses, to the State of Missouri, for the purpose of determining whether you have made a profit or loss?

A. Well, that investment expense is apportioned to the investment account.

[fol. 1012] Q. And then charged that way, is that what you mean?

A. It is charged to the investment account. It is not my understanding that Missouri is charged with a portion of your investment item there. I am not sufficiently familiar with it, with the details of that, to answer absolutely correctly.

Q. Now, if it should develop that Missouri is charged with its proportionate part of the expense of handling investments, then don't you think it would follow that Missouri should be allowed to consider the earnings on investments in fixing a rate?

A. No, I don't think so.

Q. You don't think it would be fair to charge us with the expense of handling it and not allow us to consider it in fixing a rate, do you?

A. Well, I don't think that the unearned premiums—income upon the unearned premiums, should be—you mean that that should be credited to the rate structure?